

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 1, 2013 which found that the appellant did not meet four 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. However, the ministry was not satisfied that the evidence establishes that:

- in the opinion of a medical practitioner, the appellant's impairment is likely to continue for at least two years;
- 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,
- as a result of these restrictions, 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated March 15, 2013, a physician report (PR) dated December 27, 2012 and an assessor report (AR) dated March 4, 2013, both completed by the appellant's family physician who has known her for her "entire life", as well as the following:

Request for Reconsideration stamped received by the ministry September 3, 2013, and a letter dated September 10, 2013 from the general practitioner who completed the reports for the PWD Application. The general practitioner wrote that she had seen the appellant and they are exploring her multiple environmental allergic reactions and need to do a follow-up assessment in the next 4 to 6 weeks before they can complete the appeal regarding her disability.

Diagnoses

The appellant has been diagnosed by her general practitioner with environmental sensitivities to mold, bleach, ammonia, exhaust, COPD [Chronic Obstructive Pulmonary Disease], arthritis, and anxiety.

Duration

- In the physician report, in response to the question whether the impairment is likely to continue for 2 years or more, the general practitioner left this section blank with no comments.

Physical Impairment

- In the health history, the general practitioner wrote that the appellant "has been unable to work because of reactions to environmental exposure- bleach, ammonia and mold. Has reactive airway disease and COPD. Joint swelling and stiffness. Pain with activities and in morning."
- The general practitioner reported in the PR that the appellant does not require a prosthesis or aid for her impairment.
- Functional skills reported in the PR indicated that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 7 to 16 kg (15 to 35 lbs.) and remain seated 1 to 2 hours.
- In the AR, the general practitioner assessed the appellant as independent with walking outdoors and standing. The general practitioner assessed the appellant as requiring periodic assistance from another person with walking indoors, climbing stairs and lifting and carrying and holding. The comments added by the general practitioner are: "Limited when having a reaction to chemical/mold exposure."
- The general practitioner crossed out the section of the AR relating to assistance provided through the use of an assistive device and assistance provided by assistance animals.
- In her self-report, the appellant wrote that she has environmental sensitivities to bleach, mould, ammonium chloride, exhaust and perfumes/fragrances. She also has COPD and a reactive

airway disease which causes anxiety regarding the reactions to the environment. It affects her on a daily basis due to the commonplace use of the products in public places (i.e. shopping areas, banking, dining, etc.) Breathing becomes restricted and very painful with fluids being expelled the longer or degree of exposure.

- Extreme headaches and swelling of the joints happens and it is difficult to reduce the swelling and pain due to the lack of medications as she has a reaction to the meds.
- She has not found an appropriate treatment for pain other than meditation and trying to reduce symptoms.
- Walking and mobility become very difficult. She can become fatigued and have full body ache during a reaction and it will increase due to the insomnia resulting from no relief of the symptoms.
- The appellant wrote that quite often circumstances not under her control (i.e. environment, people) puts her into contact with irritants, and reactions occur that cause her to leave many situations.

Mental Impairment

- In the PR, the general practitioner reported significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention or sustained concentration, with no further comments added.
- The general practitioner indicated that the appellant does not have difficulties with communication and, in the assessor report, that she has a satisfactory ability to communicate in all areas.
- In the AR, the general practitioner assessed no major impacts with cognitive and emotional functioning but moderate impacts in the areas of impulse control, insight and judgment, attention/concentration and memory, with minimal or no impacts to the remaining 9 areas of functioning. The general practitioner provided a comment: "Sx [symptoms] are worse when has exposure."

Daily Living Activities (DLA)

- In the PR, the general practitioner reported that the appellant is restricted on a continuous basis in the areas of personal self care, basic housework, and daily shopping. Restrictions are also reported for mobility inside and outside the home, with no indication of the degree of restriction in these areas.
- The appellant is not restricted with meal preparation, management of medications, use of transportation and management of finances. No assessment is made by the general practitioner for social functioning. Regarding the degree of restriction, the general practitioner wrote: "reaction to environment irritants."
- In the AR, in response to the request to describe the appellant's mental or physical impairments that impact her ability to manage DLA, the general practitioner wrote that she is "limited by fear and anxiety of being exposed to chemicals and/or mould. Has dyspnea, SOB [shortness of breath], cough, swelling and joint pain, (illegible), eczema."
- The general practitioner indicated that all tasks of the DLA personal care, meals, management of medications and transportation are performed independently with no need for assistance.
- The appellant is assessed as requiring periodic assistance from another person with basic housekeeping (with a note by the general practitioner: "reacts to detergents and soap") and

with 1 task (going to and from stores) of 5 tasks of shopping ("stores are often using chemicals to clean and she reacts"), and with 1 task (banking) of 3 tasks of paying rent and bills ("reacts to cleaning chemicals"). Although no assessment is made for the task of using public transit, the general practitioner noted "reacts to cleaning chemicals."

- In the additional information to the AR, the general practitioner wrote that the appellant has multiple chemical and medication sensitivities and exposure reactions and "she is unable to find employment because of the chemicals that are used to clean. We have tried to have her environment controlled but it has not worked."
- The general practitioner indicated that the appellant functions independently in 3 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others and securing assistance from others. The appellant requires periodic support/supervision in the areas of developing and maintaining relationships and dealing appropriately with unexpected demands, with a note: "stress around being in others' homes".
- The general practitioner assessed marginal functioning in both her immediate and extended social networks, with a comment: "isolates to avoid chemical exposure."
- In her self-report, the appellant wrote that her environmental sensitivities affect her on a daily basis due to the commonplace use of the products in public places (i.e. shopping areas, banking, dining, etc.) In private homes, places that have a dishwasher and, depending on laundry use, can set off a serious reaction due to the common use of laundry and dishwashing products, etc. that cause irritabilities to her skin, sinuses, lungs, and joints.

Need for Help

- In the reports included in the PWD application, the general practitioner indicated that the appellant does not require an aid for her impairment, or any assistive device.
- The general practitioner indicated in the AR that the appellant lives with family, friends or caregiver and the help required for DLA is provided by family and friends with a note: "needs help to shop as cannot shop in stores because of chemicals."
- The appellant wrote that she has needed assistance to shop, do her banking, mobility, and everyday chores (cooking, cleaning

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision. She wrote that she has a major disability that is ongoing that severely impacts her daily living and opportunity for work. Entering into the public carries physical consequences every time, even to complete simple tasks, as well as at home. Environmental testing has been very difficult to validate and difficult to treat.

The ministry relied on its reconsideration decision. At the hearing, the ministry stated that the appellant had recently contacted the local ministry office and advised that, after consulting with an advocate, she had decided not to pursue the appeal and will, instead, begin the process of reapplying for PWD designation.

The Tribunal was not in receipt of a completed form indicating both the appellant's and the ministry's Consent to Dismiss the appeal and, therefore, the panel proceeded to hear and determine the appeal, in accordance with the Tribunal's practices and procedures.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found the appellant is not eligible for designation as a person with disabilities (PWD), 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 that, in the opinion of a medical practitioner, is likely to continue for at least 2 years, 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.

Duration

The appellant's position, as set out in her Notice of Appeal, is that she has a major disability that is ongoing.

The ministry's position is that the general practitioner did not indicate in the PWD application that the appellant's impairment will continue for 2 or more years.

Panel Decision

The legislation requires that, in the opinion of a medical practitioner, the appellant's impairment is likely to continue for at least two years. In the PR, in response to the question whether the impairment is likely to continue for 2 years or more, the general practitioner left this section blank with no comments. In her letter dated September 10, 2013, the general practitioner wrote that she had seen the appellant and they are exploring her multiple environmental allergic reactions and need to do a follow-up assessment in the next 4 to 6 weeks before they can complete the appeal regarding her disability. Given that the general practitioner indicated that the prognosis for the appellant's condition is as yet undetermined, the panel finds that the ministry reasonably determined that the medical practitioner does not confirm that the appellant's impairment will likely continue for 2 years or more.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of her dyspnea, shortness of breath, cough, swelling and joint pain, and eczema as a result of her environmental sensitivities to mold, bleach, ammonia, exhaust, and her COPD. The appellant argued that she has a major disability that severely impacts her daily living and opportunity for work. The appellant argued that her ability to enter into the public carries physical consequences every time, even to complete simple tasks.

The ministry's position is that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment. The ministry argued that, in terms of physician functioning, the general practitioner indicated that the appellant is able to walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, to lift between 15 to 35 lbs. and to remain seated for 1 to 2 hours. The ministry pointed out that the appellant is assessed as independently able to walk outdoors and to stand, with

periodic help to walk indoors, climb stairs and to lift/carry/hold.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage his DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The ministry describes this approach well when it defines the word "impairment" in the physician report as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it quite appropriately describes the legislative intent.

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 prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner who has known her for her "entire life," diagnosed the appellant with environmental sensitivities, COPD and arthritis. In the health history, the general practitioner wrote that the appellant "has been unable to work because of reactions to environmental exposure... has reactive airway disease and COPD. Joint swelling and stiffness. Pain with activities and in morning." In her self-report, the appellant wrote that when she has a reaction, her breathing becomes restricted and very painful, she has extreme headaches and swelling of the joints, and that it is difficult to reduce the swelling and pain because she also has a reaction to many medications. The appellant wrote that her walking and mobility become very difficult. She can become fatigued and have full body ache during a reaction. In the PR, the general practitioner reported functional skills indicating that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, she can lift 7 to 16 kg (15 to 35 lbs.) and remain seated 1 to 2 hours.

In the AR, the general practitioner assessed the appellant as independent with walking outdoors and standing. While the general practitioner assessed the appellant as requiring periodic assistance from another person with walking indoors, climbing stairs and lifting and carrying and holding, the comments added by the general practitioner are: "limited when having a reaction to chemical/mold exposure," and no further information was provided as to the frequency that the appellant experiences these reactions. The appellant does not use an assistive device, such as a breathing device, or an aid to help compensate for her impairment. While the general practitioner has diagnosed the appellant with several challenging medical conditions and has described outcomes from adverse environmental exposure, the panel finds that the general practitioner has provided little information as to specific restrictions arising from the diagnoses. For example, regarding her environmental sensitivities, there is no elaboration as to what types of public spaces (grocery stores, pharmacies, doctors' offices, city streets, etc.) must be avoided or which are accessible on a limited basis and for how long or under what circumstances. Similarly, as a result of her COPD, no information is given on what type and level of exertion brings on SOB to the point that the activity must be discontinued. Considering the available evidence, the panel finds that the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the general practitioner's diagnosis of anxiety and the evidence that this affects her day-to-day functioning significantly.

The ministry's position is that a severe mental impairment has not been established by the information provided. The ministry argued that the general practitioner reported moderate impacts to cognitive and emotional functioning in the areas of impulse control, insight and judgment, attention/concentration and memory, and that there are a number of aspects with minimal or no impact at all. The ministry argued that the general practitioner reported no difficulties with communication. The ministry argued that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment.

Panel Decision

The general practitioner diagnosed the appellant with anxiety with no date of onset provided. In the AR, in response to the request to describe the appellant's mental or physical impairments that impact her ability to manage DLA, the general practitioner wrote that she is "limited by fear and anxiety of being exposed to chemicals and/or mould." In the AR, the general practitioner assessed no major impacts with cognitive and emotional functioning. The appellant is assessed with moderate impacts in the areas of impulse control, insight and judgment, attention/concentration and memory, with minimal or no impacts to the remaining 9 areas of functioning. The general practitioner commented that her symptoms are worse when she has exposure, but there is no detail provided as to how often the exposures occur or for how long the appellant experiences a reaction.

The general practitioner indicated that the appellant functions independently in 3 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others and securing assistance from others. The appellant requires periodic support/ supervision in the areas of developing and maintaining relationships and dealing appropriately with unexpected demands, with a note: "stress around being in others' homes." The general practitioner assessed marginal functioning in both her immediate and extended social networks, with a comment: "isolates to avoid chemical exposure."

The general practitioner reported that the appellant has no difficulties with communication and has a satisfactory ability in all areas. In the AR, the general practitioner indicated that the appellant independently manages most of the listed "mental" tasks of daily living, including making appropriate social decisions, making appropriate choices and paying for purchases when shopping, managing her medications, and conducting her budgeting, while she reacts to cleaning chemicals and requires periodic assistance with banking. Considering the evidence from the general practitioner that the appellant's anxiety is tied primarily to her fear of exposure to the substances which cause a physical reaction rather than as a result of a mental disorder per se, and those impacts assessed to functioning are in the moderate range, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment 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 on an ongoing basis to the extent that she requires the significant

assistance of another person.

The ministry's position is that as the majority of DLA are performed independently or require periodic help from others with no information provided on how often or the duration the appellant requires assistance, Therefore, the information from the prescribed professional does not establish that the appellant's impairments significantly restrict DLA either continuously or periodically for extended periods.

Panel Decision

The evidence of the appellant's general practitioner is that although the appellant is restricted in several DLA, there is not a corresponding need for assistance from another person. While continuously restricted with personal care, the appellant is assessed with performing all 8 listed tasks of personal care independently, without any assistance. In the PR, the general practitioner reported continuous restriction to basic housekeeping but, in the AR, that the appellant requires periodic assistance from another person with laundry and basic housekeeping, with the explanation that she "reacts to detergents and soaps." The general practitioner implies that for those chores that do not require detergents and soaps, or if alternative cleaning products were used, the appellant would not react and not require assistance, but this is not clear. The appellant is assessed with continuous restrictions to daily shopping and, again, she requires periodic assistance with one task of 5 listed tasks for shopping, namely going to and from stores, because "stores are often using chemicals to clean and she reacts." When the store does not use chemicals or has not cleaned recently, the general practitioner implies by her comment that the appellant would not react and not require assistance with shopping, but this is not clear. In her self-report, the appellant wrote that her environmental sensitivities affect her on a daily basis due to the commonplace use of the products in public places (i.e. shopping areas, banking, dining, etc.)

As to the DLA of moving about indoors and outdoors, in the PR the general practitioner reported the appellant is limited to being able to walk 1 to 2 blocks unaided, but no aids are required to compensate for her impairment. In the AR, the general practitioner indicated that the appellant is independent with walking outdoors but requires periodic assistance with walking indoors, that she is "limited when having a reaction." The appellant is not restricted with meal preparation, management of medications, use of transportation and management of finances. In the AR, the general practitioner indicated that the appellant requires periodic assistance with banking as she "reacts to cleaning chemicals," and the panel finds that this does not define in what way and how often the appellant requires assistance or for how long.

For those DLA which relate to a mental impairment, the appellant is assessed in the AR as independent with making appropriate social and financial decisions and with relating to, communicating and interacting with others. Without a clearer, more detailed picture of how the appellant's medical conditions restrict her daily functioning, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 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.

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. The ministry pointed out that no assistive devices are 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.

The evidence of the prescribed professionals establishes that the appellant lives with family, friends or caregiver and receives assistance required for DLA from her family and friends, that she needs help to shop as she cannot shop in stores because of chemicals. 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 help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

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.