

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) February 3, 2014 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. Based on the information provided, 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

For its reconsideration decision the Ministry had the following evidence:

1. The Appellant's PWD application consisting of:
  - A Physician's Report ("PR") completed on August 16, 2013 by a doctor who reported that the Appellant has been his patient for 3 years and he had seen the Appellant 2-10 times in the 12 months preceding the report.
  - An Assessor's Report ("AR") completed on August 16, 2013 by the same doctor.
  - The Appellant's self-report.
2. The Appellant's request for reconsideration dated January 20, 2014 with her written submission and a letter dated January 31, 2014 from the doctor who completed the PR and AR.

### *Diagnoses*

In the PR, the doctor diagnosed the Appellant with complex regional pain syndrome onset 2012 and carpal tunnel syndrome onset 2007. The doctor did not diagnose any mental health conditions.

### *Physical Impairment*

In the self report, the Appellant described her disability as:

- Carpal tunnel syndrome developed years ago from strenuous and repetitive labor work.
- Extremely damaged nerves from her finger tips to elbows.
- Complex regional pain syndrome (also known as reflex sympathetic dystrophy), a neurological disorder.
- Extremely painful and unbearable - have taken use of her hands from her.
- Several times a day, every day, her hands go numb with a burning feeling, as if being held in an open fire; episodes last for quite awhile every time; also happens throughout the night for about 3-4 hours; she wakes up in agony, often has to sleep sitting up to improve her circulation.
- She has been referred to a hand clinic to see if an operation will help.

In her request for reconsideration, the Appellant wrote that

- Her symptoms in both hands are worse since she applied for PWD; now has to take heavy duty pain pills (oxycodone -30ml per day) every few hours to get through a day.
- The more she uses her hands, the more it aggravates her situation, the more unbearable the pain is, and so she masks it with more medication creating more nerve damage in the long run.
- The condition doesn't rest through the night; she wakes in extreme pain from flare-ups (feels like her hands and arms are being held in an open fire), so takes more pills to get some rest.
- Complex regional pain syndrome is associated with dysregulation of the central nervous system and autonomic nervous system, resulting in multiple functional loss, impairment and disability; will not burn itself out; needs treatment which is complicated, involving drugs, physical therapy and neuromodulation (procedure to normalize nerve function/electric current) to get some relief.
- Likelihood of condition resurfacing after remission is significant; syndrome is one of the most painful, long term conditions, scoring 42/50 on the McGill Pain Scale – above amputation and child birth
- Syndrome has physical and psychological factors; she finds it very difficult to live with this condition.

- An operation suggested in the past will not help because the damage is done; rest and therapy is key to her recovery; her nerve damage is extreme so she tries to save and protect the remaining ability she has left in her hands.

In the PR, the doctor provided the following information about the Appellant's impairment:

- Due to weakness in right hand unable to grab effectively; often dropping objects; e.g., coffee cups; pain in wrist and hand much worse with activity.
- Has not been prescribed any medication and/or treatments that interfere with his/her ability to perform daily living activities.
- Requires a right wrist splint.
- Can walk 4+ blocks, climb 5+ stairs unaided, lift 5-15 lbs and has no limitations sitting.

In the AR, the doctor provided the following information about the Appellant's impairments:

- Diminished use of dominant right hand; chronic wrist/hand pain.
- Walking indoors and outdoors, climbing stairs, standing – independent.
- Lifting, carrying and holding – periodic restrictions.

In his January 31, 2014 letter, the doctor wrote that:

- The Appellant's carpal tunnel syndrome with secondary Complex Regional Pain Syndrome is severe and continuous. Since the Appellant's initial application in July 2013, her condition has worsened and she is more restricted in her daily living activities.
- Given the weakness in her dominant right hand, she has resorted to using her left hand for many activities and is experiencing worsening of her previously moderate left hand symptoms.
- The Appellant has been pursuing recommended treatment with no improvement thus far.
- The Appellant has quite significant restrictions in her daily living activities; her symptoms are unremitting and continuous.
- It is his professional opinion that the Appellant meets the standards for PWD benefits.

### *Mental Impairment*

In her request for reconsideration the Appellant wrote that:

- Complex regional pain syndrome also has psychological factors, such as reduced quality of life and impaired occupational functions, and psychological problems (increased depression and anxiety).
- Not a stranger to depression and anxiety that hinder her well being and restrict her life and income; very depressing not being the independent person she once was.
- Finding it very difficult to live with this condition; even every day domestic work is overwhelming.

In the PR, the doctor reported that the Appellant has no significant deficits with cognitive and emotional function. He did not complete the section for cognitive/emotional function in the AR.

### *Daily Living Activities*

In her self-report, the Appellant wrote that:

- Everyday tasks like brushing her hair and teeth, turning shower taps on, getting dressed and even pouring milk for tea is impossible without pain and sometimes just impossible.
- Fingers turn white and cold (no circulation) and then the day is shot, can't accomplish anything

until feeling comes back; her fingers won't bend or function at all; at times, burns herself cooking or cuts herself by accident – won't realize it because of lack of feeling.

- She is restricted in every aspect of her life, since she uses her hands for almost everything.
- Her nerves are damaged so badly even smallest tasks are impossible; e.g., opening jars, doing up a necklace clasp, holding the phone, carrying things and writing – makes her hand go numb.
- This is very overwhelming, discouraging and depressing for her because she has been independent most of her life; had her own business which has been put on hold until her symptoms can be resolved.

In her request for reconsideration, the Appellant wrote that:

- Complex regional pain syndrome affects her life negatively and she needs major help just to get through the day; mornings are the worst; her hands take at least 1-2 hours to be functional.
- She needs help with shower taps, getting dressed (zippers and buttons), cooking meals; also, housecleaning, vacuuming and laundry is hard; can't walk her dogs without help.

In the PR, the doctor reported the following restrictions to daily living activities:

- Personal self care, meal preparation, basic housework, daily shopping - continuously restricted.
- Management of medications, mobility inside and outside the home, use of transportation, management of finance and social functioning – no restrictions.
- For assistance with daily living activities the doctor added "assistance needed with housework, meal preparation".

In the AR, the doctor provided the following information about the Appellant's ability to manage daily living activities:

- Independent in all aspects of personal care, paying rent and bills, medications and transportation.
- Independent going to/from stores, reading prices/labels, making appropriate choices, paying for purchases, but periodically restricted in carrying purchases home.
- Periodic restrictions with laundry and basic housekeeping.
- Independent with meal planning, food preparation, safe food storage, but periodically restricted in cooking.
- Independent in all aspects of social functioning; no information provided about social networks.

In the January 2014 letter the doctor wrote that:

- The Appellant has quite significant restrictions in her activity due to hand weakness and pain, and requires substantial assistance to complete basic daily living activities.

#### *Help with Daily Living Activities*

In the PR, the doctor indicated that the Appellant requires a wrist splint and assistance with housework, meal preparation.

In the AR, the doctor noted that friends provide help, the Appellant uses splints and no assistance is provided by an assistive animal.

At the hearing, the Appellant said that she believes that she has met all 5 criteria for PWD status. She felt that the Ministry decision may have been affected by the doctor confusing periodic vs. continuous assistance required for daily living activities because some activities are daily (continuous) and some perhaps weekly (periodic). She referred to her written submissions in the record, regarding the restrictions she experiences due to the severe pain caused from her condition. The Appellant also made the point that complex regional pain syndrome is quite new and not a lot is known or has been written about it.

The Appellant said that she endures severe pain when her hands are overworked. Once the pain starts, it takes days to recover even when taking potent medications that she prefers not to be on due to the effects of the medications on her stomach. She also mentioned her desire to try other treatments, including acupuncture. The Appellant stated that her everyday activities are now severely impacted and she requires substantial assistance to complete basic daily activities. Several times she referred to the doctor's January 2014 letter as having the necessary evidence that she satisfied all of the criteria for PWD designation. Near the end of her testimony she said that her condition has changed a little bit since she first applied and that her symptoms are worse. She expects that in time she will be totally disabled if there is no improvement.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's oral testimony because she provided information about her conditions and therefore that testimony is in support of the evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry reaffirmed 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 submitted that she has been diagnosed with complex regional pain syndrome and carpal tunnel syndrome. When she over exerts, the pain in her hands is so severe that she needs help all day. She submitted that her condition has gotten worse since she applied for PWD designation. Also, her doctor confirmed that she has significant restrictions in her activity due to hand weakness and pain and his January 2014 letter provides evidence that she satisfies the criteria for PWD designation.

The Ministry, in its reconsideration decision, indicated that it reviewed the information provided by the

Appellant and her doctor. The Ministry noted that the doctor reported that the Appellant is independent in physical ability and mobility, except for lifting and carrying. The Ministry also considered the information provided by the doctor in his January 2014 letter. Based on the information provided, the Ministry was not satisfied that the information established 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. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how and the extent to which a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR. The Panel also notes that employability is not a criterion in section 2(2) of the EAPWDA, nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

In this case, the doctor diagnosed the Appellant with complex regional pain syndrome and carpal tunnel syndrome. He also completed the PR and AR, describing the Appellant's impairment as weakness and diminished use in her right hand and chronic wrist/hand pain. However, the Panel notes that the information about restrictions to the Appellant's daily activities in those two reports is not consistent. In the PR, the doctor reported that the Appellant is continuously restricted in performing personal self care, in meal preparation, in basic housework and daily shopping. But, he wrote that she needs assistance only with housework and meal preparation. In the AR, the doctor reported that the Appellant is independent walking indoors/outdoors, climbing stairs/standing and is periodically restricted only with lifting and carrying/holding. Further, the doctor reported that the Appellant is independent in other daily tasks requiring physical functioning and especially the use of her hands; that is, all aspects of personal care, going shopping and getting in and out of a vehicle. In the AR, he reported no activity for which continuous assistance is needed.

In her submissions, the Appellant described how painful her condition is and the more she uses her hands the more her condition is aggravated. She stated that she endures severe pain when her hands are overworked and then it takes days for her to recover. She submitted that she needs help with getting dressed and with cooking, but she also wrote that housecleaning, vacuuming and laundry is hard. The Appellant relied on the January 2014 letter from her doctor as confirmation about the severity of her impairment. In that letter, the doctor wrote that the Appellant's condition has worsened and she is more restricted in her daily living activities; however, he provided no details about which activities are restricted and to what extent, especially considering that in the AR he reported that the Appellant needed periodic assistance with only a few daily tasks. The doctor wrote that the Appellant's symptoms are unremitting and continuous, but he also wrote that she has resorted to using her left hand for many activities. At the hearing, the Appellant stated that her everyday activities are now severely impacted and she requires substantial assistance to complete basic daily activities. She also said that her condition has changed a little bit since she first applied and her symptoms are worse.

The Panel finds that, when all of the information from the Appellant and the doctor is considered, the Appellant's physical impairment can be described as moderate. Therefore, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe physical impairment.

### **Severe Mental Impairment**

The Appellant submitted that there are psychological factors to her physical conditions. She is experiencing increased depression and anxiety, hindering her well-being. The Ministry considered the Appellant's and the doctor's information, but was not satisfied that a severe mental impairment was established.

#### *The Panel's Findings*

The Panel notes that, although the Appellant described increasing depression and anxiety, the doctor did not confirm these conditions. He also did not diagnose any mental health conditions and in fact reported in the PR that the Appellant had no significant deficits in cognitive and emotional functioning. Therefore, 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 the pain from her conditions makes everyday tasks very difficult and sometimes impossible. She is restricted in every aspect of her life since she uses her hands for almost everything. The Appellant submitted that she needs major help just to get through the day. The Appellant stated that her doctor confirmed the significant restrictions to her daily functioning.

The Ministry considered the doctor's reports of the Appellant's ability to manage daily living activities, including the information in the January 2014 letter. The Ministry noted that for some activities the Appellant needs continuous or periodic assistance, but with no other details. For other activities, the Appellant is independent. The Ministry also noted that in the January 2014 letter, the doctor did not provide information regarding the daily living activities he was referring to. Therefore, the Ministry concluded, that the information from the prescribed professional did not demonstrate that a severe physical or mental impairment significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods.

#### *The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe physical or mental impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. The doctor is the prescribed professional in this case.

In the Appellant's circumstances, the doctor reported in the PR that the Appellant is continuously restricted in personal self-care activities, meal preparation, basic housework and daily shopping. However, in the AR he indicated that she is independent in all aspects of personal care, paying rent/bills, medications and transportation. She is also independent with all aspects of shopping, except for needing periodic assistance carrying purchases home. In the AR, the doctor also reported periodic assistance is needed with laundry and basic housekeeping, but provided no details about the extent or frequency of any help needed. In January 2014, the doctor wrote that the Appellant requires substantial assistance to complete basic daily living activities, but again provided no details about which activities and what type of or extent of help the Appellant needs. Therefore, the Panel finds that the Ministry reasonably determined that the information from the prescribed professional did not demonstrate that a severe physical or mental impairment significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods.





### **Help with Daily Living Activities**

In the PR, the doctor indicated that the Appellant requires a wrist splint and assistance with housework and meal preparation. However, in the PR, the AR and even in the January 2014, the doctor gave no indication of the extent or type of assistance the Appellant needs. In January 2014, he stated only that she requires substantial assistance.

The Ministry's position is that because the evidence did not establish that daily living activities are significantly restricted, it could not determine that significant help is required from other persons. The Ministry also noted that the use of an assistive device such as a wrist splint does not in itself establish a severe impairment

### *The Panel's Findings*

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional confirming that, because of direct and significant restrictions in her ability to manage daily living activities, the Appellant requires help. The doctor reported that the Appellant needs wrist splints, gets help from friends, and requires substantial assistance to complete basic daily living activities. However, the doctor provided no details about the type or extent of help that the Appellant needs. Therefore, the Panel finds, based on the reports from the prescribed professional and also because the evidence did not establish that daily living activities are significantly restricted, that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help from other persons or that the use of a wrist splint meets the requirement for help.

### **Conclusion**

Having considered all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Therefore, the Panel confirms that decision.