

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 23 December 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 a medical practitioner had not confirmed that the appellant's impairments would continue for at least 2 years. The ministry also determined that the information provided did not establish that the appellant had 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 (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 determined that the appellant satisfied the remaining criterion: she has 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

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

1. The appellant's PWD Designation Application. The Application package contained:
 - A Physician Report (PR) dated 12 July 2013 completed by the appellant's general practitioner (GP) who has known the appellant for 2 months and has seen her 2-10 times.
 - An Assessor Report (AR) of the same date, completed by the same GP.
 - A Self Report (SR) dated 05 June 2013 completed by the appellant.
2. The appellant's Request for Reconsideration, dated 20 December 2013, in which the appellant lists her medical history. Attached is a note from the GP dated 05 December 2013 with further information (see below).

In the PR, the GP diagnoses the appellant with overactive bladder (onset 2010), depression, query (onset 2012), past operations, oophorectomy (1990), and midlife crisis, query. The panel will first summarize the evidence from the PR and AR regarding the appellant's impairments as it relates to the PWD criteria at issue.

Duration

The GP did not answer Yes or No to the question as to whether the appellant's impairment is likely to continue for two years or more and did not provide any information regarding the expected duration of the appellant's impairments.

Severity of impairment

Physical impairment

PR:

Under health history, the GP writes that the appellant is "unable to work presently."

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA. The GP also indicates that the appellant does not require any prostheses or aids for her impairment.

The GP reports that the appellant can walk 2 to 4 blocks unaided, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and remain seated for 1 to 2 hours.

Mental impairment

PR:

No difficulties with communication are noted.

The GP reports that the appellant has significant deficits with cognitive and emotional function in the areas of executive, memory, motivation, and impulse control

AR:

The GP assesses the following impacts on daily functioning:

- Moderate impacts – in the areas of emotion, impulse control, insight and judgment, attention/concentration, memory, and motivation.
- Minimal impact – in the areas of bodily functions, executive motor activity and other emotional or mental problems.
- No impact – in the areas of consciousness, language and psychotic symptoms.

The GP provides no commentary regarding these assessments.

Restrictions in the ability to perform DLA and help required

AR:

The GP assesses the appellant's speaking reading and hearing as good and her writing as satisfactory.

As to mobility and physical ability, the GP makes the following assessments:

- Walking indoors – independent
- Walking outdoors, climbing stairs, standing, lifting and carrying and holding – independent.

The GP provides the following assessments on the appellant's ability to perform DLA:

- Personal care – independent for dressing, grooming, feeding self, regulating diet, transfers in/out of bed; periodic assistance from another person required for bathing, toileting, and transfers on and off of chair.
- Basic housekeeping – independent for laundry; periodic assistance from another person required for basic housekeeping.
- Shopping – independent for going to and from stores, reading prices and labels, making appropriate choices and paying for purchases; periodic assistance from another person required for carrying purchases home.
- Meals – independent for meal planning and food preparation; periodic assistance from another person required for cooking and safe storage of food.
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – periodic assistance required for getting in and out of vehicle; independent for using public transit and using transit schedules and arranging transportation.

The GP provides no commentary regarding these assessments.

With respect to social functioning, the GP assesses the appellant as requiring periodic support/supervision for making appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, and ability to deal appropriately with unexpected demands.

The GP assesses the appellant's relationship with her immediate and extended social networks as marginal functioning.

The GP provides no commentary regarding these assessments.

Assistance required/provided

AR

The GP indicates that the appellant receives assistance from friends. No commentary is provided.

Self Report

In her SR the appellant describes herself as a person with mental illness due to three big events: 1) in 1990 she was pregnant outside the uterus, and her right ovary was removed ;2) she attempted suicide in 2007 by taking sleeping pills, but that failed but as a result she had stomach indigestion which will cause cancer in the future; and 3) according to her gynecologist she has three tumors inside the uterus as a result of which she has no man for the rest of her life.

The appellant adds that she has had an overactive bladder since 2000 and she has to run to the bathroom frequently, approximately every 20 min. or half hour, day and night. Since she uses the bathroom so frequently she can't share a bathroom with anyone else and has to live in a unit with her own bathroom.

Request for Reconsideration

The appellant lists her medical history as follows:

1. overactive bladder (permanent)
2. three tumors in pelvic
3. mental illness because of loss of right ovary in 1990
4. once attempted to commit suicide
5. high cholesterol – taking medicine recently and permanently
6. high sugar in blood – pre-diabetic taking medication recently and permanently
7. menopause midlife crisis
8. loss of right ovary in 1990
9. anxiety and depression
10. hematurias (permanent).

In the accompanying letter of 05 December 2013, the GP lists the medication the appellant takes for her high cholesterol and mild diabetes. The GP notes the appellant's past history of overactive bladder, anxiety, abortion, and asthma. The GP states that the appellant is "unable to work, for duration of three months."

The appellant filed her Notice of Appeal on 10 January 2014, stating she disagrees with the reconsideration decision because:

'I am taking medicines for "high cholesterol" and "high sugar in blood" since July 2013 up to now (present).'

At the hearing, the appellant had brought a recent letter from the ministry relating to her employment plan, together with the ministry's proposed employment, seeking to discuss these with the panel. The panel explained that the hearing was strictly limited to hearing her explanation about why she considered the ministry's reconsideration decision unreasonable in denying her PWD designation.

With respect to the issues under appeal, the appellant reviewed her medical conditions as listed in her Request for Reconsideration and explained how as a result of these conditions she is unable to

work. She also explained that she needs PWD designation to start receiving disability assistance, as her current level of income assistance, about \$600/month, is inadequate: her rent is \$500/month, bus tickets cost \$50, as does her phone. This leaves her with nothing for groceries and her sister is fed up with providing her \$200/month for her living expenses. Not being able to work and being in her mid-50s and a senior, she deserves better support from the government. She attempted suicide once before and now still considers it.

In answer to questions, she stated that she spends much of her time walking, especially to the library and that she enjoyed doing her own cooking, shopping and housekeeping as these activities keep her mind off the stress she faces every day.

The panel finds that the new information provided by the appellant by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration, describing her ability to perform DLA and her reasons for applying for PWD designation. The panel therefore admits the appellant's testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

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 she did not meet all the requirements in section 2 of the EAPWDA. Specifically the ministry determined that a medical practitioner had not confirmed that the appellant's impairments would continue for at least 2 years. The ministry also determined that the information provided did not establish that the appellant had 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 determined that she met the remaining criterion: she has reached 18 years of age.

The applicable legislation is from section 2 of the *EAPWDA*:

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.

And from the EAPWDR:

- 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

In the reconsideration decision, the ministry notes that in the PR the appellant's GP does not indicate that her impairments will likely continue for 2 years or more. The appellant's position is that many of her conditions, including the turnors in her uterus and her overactive bladder, are permanent.

Panel findings

The panel finds that, without a specific indication or comment by the appellant's medical practitioner – her GP – in the space provided in the PR that the appellant's impairments will continue for 2 years or more, the ministry was reasonable in determining that this criterion had not been met.

Severity of impairment

Physical impairment

In the reconsideration decision, the ministry reviewed the appellant's functional skills (can walk 2 – 4 blocks unaided, etc.) as reported by the GP, who also indicated that she does not require any equipment or devices to help compensate for her impairments. The ministry also noted that she can manage all of her DLA independently or with periodic assistance and that therefore it is reasonable to assume that the appellant has a moderate physical impairment rather than a severe physical impairment.

The position of the appellant is that her overactive bladder requires her to go to the bathroom very frequently, every 20 – 30 minutes. This means she is not able to work.

Panel findings

For PWD designation, the legislation requires that a severe mental or physical impairment be established. The determination of the severity of impairment is at the discretion of the minister, taking into account all of the evidence, including that of the applicant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's GP) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the information provided regarding the severity of the appellant's impairment, the panel has drawn upon the ministry's definition of "impairment." This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological,

anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it reasonably describes the legislative intent. The cause is usually set out as a disease, condition, syndrome, injury or even a symptom (e.g. pain or shortness of breath). A severe impairment requires the identified cause to have a significant impact on daily functioning.

The panel notes that employability is not a factor in PWD designation: the legislation requires the impact on daily functioning to be assessed in terms of the ability to perform the daily living activities set out in section 2(1) of the EAPWDR, where employability does not appear on the list.

The ministry has referred to the appellant's functional skills (can walk 1 – 2 blocks unaided, etc.) and to the GP's assessment that she can perform all DLA requiring physical effort either independently or requiring periodic assistance from another person, though the GP has not provided any explanation as to why such assistance is necessary. Further, at the hearing the appellant acknowledged that she enjoys doing cooking and housework to relieve her stress and walks to destinations not requiring a bus ride, such as the library. Based on the information available, the panel finds that the ministry was reasonable in determining that a severe physical impairment had not been established.

Mental impairment

The position of the ministry is that, while the GP has assessed some significant deficits in cognitive and emotional function, some moderate impacts on daily functioning and periodic support/supervision required for social functioning, no comments or explanations were provided to support these assessments. Without such explanatory detail, the ministry determined that this criterion had not been met.

The appellant's position is that she is mentally ill. She is constantly depressed about her financial situation and, because of her medical condition, not being able to have a rnan in her life. She is also anxious about the tumors in her uterus and her ongoing medical conditions of diabetes and high cholesterol and their future impact on her health. She has attempted suicide once before and thoughts of doing so again are on her mind.

Panel findings

The panel notes that the GP has not provided a firm diagnosis of a mental health condition: the GP has noted "query" beside both depression and midlife crisis in the list of diagnosed impairments and notes in the 05 December 2013 letter that the appellant has a "past history" of anxiety. Moreover, as the ministry has noted, the GP has not provided any explanation or description of the significant cognitive and emotional deficits and moderate impacts on daily functioning identified in the PR and AR, nor any description of the nature and frequency of periodic help assessed as being required for social functioning. Despite the appellant's suicidal ideation, without a firm diagnosis of a mental health condition and detailed information that would provide a clear picture of the extent to which a mental impairment restricts the appellant's ability to perform DLA, including making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

[]

Significant restrictions in the ability to perform DLA.

The position of the ministry is that, based on all available information provided by the appellant and her GP, there was not enough evidence to establish that the appellant's impairments directly and significantly restrict her DLA continuously or periodically for extended periods and that therefore this criterion had not been met.

The appellant's position is that her GP has identified several moderate impacts of her mental health conditions on her daily functioning, as well as having identified quite a few DLA where she needs periodic assistance or support/supervision. Her position is that this is surely enough to meet the criterion, especially considering her age and being a "senior,"

Panel findings

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion which has not been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the *EAPWDA*, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" all the criteria are met. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information from the prescribed professional that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods, by presenting a clear and complete picture of the nature and extent of these restrictions.

As noted by the ministry and by the panel above, while the GP has assessed the appellant as requiring periodic assistance in a few aspects of DLA requiring physical effort and periodic support/supervision for all areas of social functioning, the GP has provided no commentary (except "unable to work") concerning the nature and frequency of periodic help or support/supervision required. Without a clear and complete picture of how, how often, to what degree and under what circumstances the appellant is restricted in performing DLA, the panel finds that the ministry was reasonable in determining that this criterion had not been met.

Help with DLA

The position of the ministry is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant's position is that the evidence from the GP clearly shows that the appellant requires help to manage her DLA. She also needs financial help because her sister is fed up with providing her with \$200/month so that she can make ends meet.

Panel findings

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 need for financial assistance is not a factor for this criterion; rather the legislation refers to help in relation to a daily living activity if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. 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. The panel therefore confirms the ministry's decision.