

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) January 27, 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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

For its reconsideration decision, the Ministry had the following evidence:

1. Appellant's PWD application dated September 17, 2013 and consisting of:
 - The Appellant's self-report.
 - A physician's report ("PR") completed on September 16, 2013 by a doctor who indicated that the Appellant had been his patient for 4½ years and he had seen her between 2-10 times in the year preceding the completion of the report.
 - An assessor's report ("AR") completed by the same doctor on the same day.
2. Appellant's request for reconsideration with a statement from the Appellant.

For this appeal, the Appellant submitted a written statement from her advocate and also signed by her. That statement has arguments to support the Appellant's appeal which are summarized in Part F of this decision. The Appellant also submitted a written statement with information about her conditions and how they impact her daily life.

The Panel finds that the Appellant's written statement and information in the joint advocate/Appellant statement provide clarification and additional details about the Appellant's conditions. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in both statements as being in support of the evidence that was before the Ministry at reconsideration.

The Panel summarizes the relevant evidence as follows:

Diagnoses

In the PR, the doctor diagnosed the Appellant with rheumatoid arthritis with flexion deformities of her hands and intellectual impairment.

Physical Impairment

In her self-report and reconsideration statement, the Appellant described her disabilities as follows:

- She believes that the arthritis was noticed around 2004.
- Arthritis affects most parts of her body – wrist, hands, knees, ankles, shoulders and her ability to walk long distances.
- The arthritis is mostly noticeable through the winter season, cold times of the year.
- The medication that has been prescribed causes her to tire easily and she has been told by the doctor that the meds will cause vision problems as well.
- Working in a position requiring physical work for many years and only completing part of grade 5 caused her big problems finding any sort of job; she has been hired for a job for which no education is needed, but she can do just the basic things so she goes at her own pace.
- The work is very tiring because of the arthritis throughout her whole body.

In her appeal statements, the Appellant described her impairment as follows:

- She has had rheumatoid arthritis since 2004 and is on a lifelong medication regime, involving two different medications. She is unable to work at meaningful jobs; has no skills and does not have the education required for employment; she did not finish grade 5 and there is no possibility of getting a job that does not require physical work
- The older she gets, the less and less she can walk distances and totally unable to stand for

long periods of time – there is no possibility of this is improving.

- Her arthritis is getting worse as time goes on.

In the PR, the doctor described the Appellant's physical impairment as follows:

- She has rheumatoid arthritis which mostly affects her hands and she is not able to perform heavy physical labor; she has permanent hand deformities from the rheumatoid arthritis.
- She does not require any prostheses or aids for her impairment.
- She can walk unaided for 4+ blocks, climb 5+ stairs unaided, has no limitations in lifting or remaining seated.

Mental Impairment

In the PR, the doctor reported that the Appellant:

- Will have lifelong intellectual impairment.
- Has difficulties with cognitive communication – difficulty comprehending, often needs to have things repeated to her.
- Has significant deficits with cognitive and emotional function in the areas of executive, language, memory, and attention or sustained concentration.

In the AR, the doctor reported that the Appellant:

- Has satisfactory ability to communicate in the areas of speaking and hearing; poor communication ability in reading and writing.
- In areas of cognitive and emotional functioning, has moderate impacts in attention/concentration, executive, and memory; minimal impacts in consciousness, insight and judgement, language and other neuropsychological problems; and, no impact in bodily functions, emotion, impulse control, motivation, motor activity, psychotic symptoms, and other emotional or mental problems.

Daily Living Activities

The following information about the Appellant's ability to manage daily living activities was provided in the Appellant's appeal statements:

- Is working but suffers much pain while working.
- Takes much medication to cope with daily living and household chores.
- Has friends and family to help with daily living; e.g., rides, cleaning her apartment and any lifting or carrying (grocery shopping).
- Does not have a car, so to shop, go to medical or other appointments, or other daily living activities that require leaving her residence, she has to walk if a bus is not running or does not go near where she has to go; walking is her only option evenings and sometimes during the day.
- Lessening ability to walk distances and inability to stand for long periods of time significantly restrict daily living activities requiring ambulatory abilities.

In the PR, the doctor indicated that:

- The Appellant has not been prescribed any medications that interfere with her ability to perform daily living activities.

In the AR, the doctor reported that the Appellant:

- Is independent walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding – "if [Appellant] needed to do heavy lifting (e.g. moving furniture) she would need assistance."
- Is independent in managing all tasks in the areas of personal care, basic housekeeping,

shopping, meals, paying rent and bills, medications and transportation.

- Is independent in all areas of social functioning.

The doctor wrote that he has no information about the Appellant's relationship with her immediate or extended social networks.

Help with Daily Living Activities

In the AR, the doctor wrote that the Appellant lives independently and does not receive help, other than social assistance. Regarding assistance provided by other people, the doctor wrote "no help provided". He also reported that she does not use any assistance device or equipment. For equipment required he wrote "N/A" [not applicable] and indicated that the Appellant does not have an assistance animal.

The Appellant stated that she has friends and family to help with daily living; e.g., rides, cleaning her apartment and any lifting or carrying (grocery shopping).

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 her rheumatoid arthritis affects most parts of her body. She is less and less able to walk distances or stand for long periods, which significantly restrict daily living activities requiring ambulatory abilities. The arthritis also impacts her ability to lift things and do heavy labour. She needs to take strong medications for life.

The Ministry, in its reconsideration decision, considered the information from the Appellant in her self-report and reconsideration request, as well as the information from the doctor in the PR and AR. The Ministry noted that the doctor reported that the Appellant's rheumatoid arthritis mostly affects her

hands so that she is not able to perform heavy physical labour. However, the Ministry also noted that employability is not an eligible criterion for designation as a PWD. The Ministry considered the information from the doctor that the Appellant is independent in all aspects of mobility and physical ability. Based on the information provided, the Ministry found that there was not enough evidence to establish 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. As for the ability to find and/or retain employment, the Panel 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.

The doctor diagnosed the Appellant's condition as rheumatoid arthritis and he described her impairment as permanent flexion deformities of the hands due to the arthritis. The Appellant wrote that the arthritis affects most parts of her body; that is, her wrist, hands, knees, ankles and shoulders. The arthritis also affects her ability to lift things, walk long distances and she is totally unable to stand for long periods of time. The Appellant wrote that her arthritis is getting worse. The Panel notes that the doctor's reports do not describe the same level of impairment as the Appellant describes. The doctor only reported impairment in the Appellant's hands. He also indicated that she can walk 4 + blocks unaided, climb stairs and stand unaided. She needs help only when doing heavy lifting. In all aspects of mobility and physical ability, the doctor indicated that the Appellant is independent. Therefore, the Panel finds that the Ministry reasonably determined that there is not enough evidence to establish a severe physical impairment.

Severe Mental Impairment

The Appellant submitted that the doctor's reports of deficits with cognitive and emotional functions should be considered in conjunction with her efforts to deal with her physical impairment.

The Ministry noted the doctor's reports of the level of deficits with cognitive and emotional functions, as well as difficulties with communicating. Based on this information, the Ministry determined that there was not enough evidence to establish a severe mental impairment.

The Panel's Findings

The doctor reported that the Appellant has an intellectual impairment and that she has difficulties in areas of communication from cognitive difficulties, often needing to have things repeated to her. The Appellant submitted that she has difficulties managing her daily living activities because of a combination of severe physical and mental impairments. In terms of impacts to daily functioning from cognitive/emotional deficits, the doctor reported moderate impacts to only 3 areas of such functioning, minimal impacts to 4 areas and no impacts to the other 7 areas of such functioning. The doctor provided no narrative about how the moderate or minimal impacts affect the Appellant's functioning and in fact reported that the Appellant is independent in all areas of social functioning. Therefore, based on the information provided, especially the doctor's reports, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant submitted that because of her severe physical and mental impairment she has difficulty performing daily living activities, such as cleaning her apartment, lifting and carrying. She wrote that she takes a lot of medication to cope with such activities and household chores.

The Ministry noted that it relies on the medical opinion and expertise of the Appellant's doctor. Based on the information from the doctor in the PR and the AR, the Ministry was not satisfied that the information demonstrated that a severe mental or physical 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 impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. In this case the doctor is the prescribed professional. Daily living activities are defined in section 2(1) of the EAPWDR and also are listed in the PR and the AR. The Appellant wrote that she has difficulty managing her daily living activities; however, this was not confirmed by the doctor. In his reports, he indicated that the Appellant independently manages all the daily living activities defined in section 2(1) of the EAPWDR, with the exception that the Appellant needs help with heavy lifting. Therefore, based on the evidence from the doctor, the Panel finds that the Ministry reasonably determined that the information provided did not demonstrate that a severe mental or physical impairment significantly restricts the Appellant's ability to perform daily living activities, either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted that she depends on friends and family to help her with daily living; e.g., rides, cleaning her apartment and any lifting or carrying.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that significant help is required from other persons. The Ministry also noted that no assistive devices are required.

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 with those activities. The doctor did not confirm the Appellant's information about needing or receiving help. Instead he reported that she independently manages all daily living activities. He also wrote that she lives independently and does not receive help other than social assistance. In addition he reported that she does not use any assistance device or equipment. Therefore, based on the opinion of the doctor, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help from other persons to manage daily living activities.

Conclusion

Having reviewed and considered all of the evidence and the 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. Therefore the Panel confirms that decision.