

### PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the "Ministry") March 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

At the hearing, the Appellant gave her oral consent to have the two representatives make submissions on her behalf and also to act as her interpreters during the hearing.

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

1. Appellant's PWD application consisting of:

- Her self-report dated October 23, 2013.
- A physician's report ("PR") completed on November 9, 2013 by a doctor who specializes in head and neck surgery, and who indicated that the Appellant had been her patient for 1 month and she had seen the Appellant once. The doctor added "she asked me to complete forms as her regular GP is unavailable".
- Letter dated September 4, 2013 by the doctor who completed the PR to the Appellant's regular doctor regarding a hearing assessment.
- An assessor's report ("AR") completed on November 12, 2013 by a registered psychologist who indicated that she had seen the appellant once for one full day assessment.

2. Appellant's request for reconsideration and a letter from her dated March 2, 2014.

In her notice of appeal the Appellant wrote that she has brain trauma from an accident when she was a child, which affected her hearing. Later a car hit her, further affecting her hearing and almost ruined her whole life. She wrote that many times she thought of ending her suffering by committing suicide, but she has a young son to take care of and she depends on him for her daily activities. Therefore, she has not required another person to help.

At the hearing, the Appellant stated, through the interpreter that she had 2 accidents resulting in injuries to her head and ongoing disabilities. She suffers from headaches, especially when walking. She used to take medications for the headaches but stopped a couple of years ago because of side effects. The Appellant also said that she cannot go outside in a normal way and cannot function as a normal person. Her son goes for her and he is also her caretaker. The Appellant stated that she should have had her original family doctor fill out the PWD application forms, but that doctor was not available. The doctor who filled out the forms did not have direct evidence of her conditions. That is why parts of the PWD application forms are blank.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in the Appellant's notice of appeal and also her oral testimony as being consistent with and in support of the evidence that the Ministry had at reconsideration.

The Panel has summarized the evidence for this appeal as follows.

### *Diagnoses*

In the PR, the doctor diagnosed the Appellant with sensorineural hearing loss – bilateral. The doctor diagnosed no mental health conditions.

### *Physical Impairment*

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

- Her disability is moderate to severe hearing loss.

- It is very difficult for her to make a living because it can be difficult for her to obtain or keep employment; she rarely gets call backs when applying for work.
- As a child, she was hit on the head by construction waste; she suffered a brain trauma and lost most of her hearing.
- She often gets headaches after a car accident and her deafness grew worse; she had months of suffering.
- One time she walked on the street and an ambulance passed by; she could hear the loud sound while wearing the hearing aid, but she could not find where the ambulance was and a pedestrian pushed her out of the way.
- It is a nightmare for her to walk on the street; therefore, she cannot go out even for shopping; she needs help or she endures until her son comes back from school.
- Her bilateral hearing loss has put her in a serious condition and prevents her from living a normal life.

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

- Has bilateral broadband hearing loss which is moderate to severe since childhood.
- Wears hearing aids, but even with them has difficulty communicating.
- For physical functioning skills, the Appellant can walk unaided on a flat surface for 4+ blocks, climb 5+ steps unaided, has no limitations with lifting or with remaining seated.
- Has difficulties with communication due to sensory causes.

In the September 4, 2013 letter, the same doctor provided the following hearing assessment of the Appellant:

- The Appellant reported slight worsening of her hearing over time and there is bilateral tinnitus.
- The Appellant wears hearing aids that are 8 years old and she is followed at a hearing center; she should have the aids reassessed to make sure they are powerful enough.
- She has difficulties hearing in a crowded environment; has difficulty hearing Weber; air conduction is greater than bone conduction bilaterally.
- Ear canals and eardrums appeared normal; rest of ENT examination was within normal limits.
- She has moderate to severe broadband hearing loss bilaterally with speech reception threshold of 66dB; discrimination at 90dB was 100% but she found it uncomfortable.

In the AR, the psychologist wrote that the Appellant's mobility and physical abilities were not assessed. The Appellant's ability to communicate was indicated as poor in the areas of speaking, reading and writing, with the following comment for all three "Due to ESL [English as a Second Language]"; for reading – "Assessed at gr [grade] 3-4 range"; for writing – "Spelling at gr [grade] 4 range"; and, poor for hearing with the comment "client reports hearing impairment due to head injury at age 11". The Appellant's "reading and writing (spelling) were assessed with selected tests" using a program.

### ***Mental Impairment***

In her self-report, the Appellant described her conditions as follows:

- She always feels disappointed and depressed about her inability to communicate with people because her hearing problems are a major reason for not getting call-backs.

In the PR, the doctor reported no significant deficits with cognitive and emotional function.

In the AR, the psychologist wrote that the "client reports symptoms of depression and anxiety" to describe the impairment impacting the Appellant's ability to manage daily living activities. The psychologist reported the following impacts to cognitive and emotional functioning:

- Moderate impact to emotion, insight and judgment, attention/concentration, motivation and other emotional or mental problems; and, no report for bodily functions and language.
- Minimal impact consciousness and impulse control; and, no impact to motor activity and psychotic symptoms.
- Adding these comments: "Presents with symptoms of depression and anxiety that moderately impacts her in the areas indicated above. She is also impacted significantly in her interpersonal functioning. I was not able to assess her functioning in all areas above so left those blank."

#### *Daily Living Activities*

In the PR, the doctor reported that the Appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities. In response to the question whether the Appellant's impairment directly restricts her ability to perform daily living activities, the doctor checked "unknown".

In the AR, the psychologist did not complete the section regarding any assistance the Appellant requires with the listed daily living activities; that is, personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation, adding "not assessed". The psychologist also did not complete the section for social functioning, but did report the following for how the Appellant's mental impairment impacts her social networks:

- Marginal functioning with her immediate social network –"client reports very little social contact".
- Very disrupted functioning with her extended social network, but with no comments.

In her reconsideration statement, the Appellant wrote that her hearing problem makes it almost impossible for her to socialize with people. She stated that as she gets older, that problem would always get in the way of any possible work she could get; no one would hire a deaf person because of difficulty communicating with a person who can't hear what people say. As for daily living activities, the Appellant stated they are restricted and noted that:

- She can never do shopping without her son assisting her.
- She can hardly hear her landlady when she tries to have a friendly chat.
- She cannot answer important phone calls because a full volume ringer is still not loud enough for her.
- Once she almost got into a car accident because she did not hear the siren and pull over.
- Sometimes when she forgets to turn a tap off, she cannot hear it running.

#### *Help with Daily Living Activities*

In the PR, the doctor provided no information regarding any help the Appellant needs or receives, except that she requires hearing aids for her impairment. In the AR, the psychologist also provided no information regarding any help the Appellant needs or receives, except that she lives with her dependent son. The Appellant stated that her son is her caretaker, and helps her with shopping and with going out.

## 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 the Ministry's reconsideration decision was not made with sufficient knowledge about how severe her disability is. Her regular doctor was not available and the doctor who completed the PR did not have all the evidence of how her hearing impairment and headaches limit her ability to communicate, go out safely, answer the phone and live her life normally.

In its reconsideration decision, the Ministry noted that it reviewed all of the information provided by the Appellant, by the doctor who completed the PR and the hearing assessment, and by the

psychologist. The Ministry noted that the Appellant's limitations are related to her significant hearing loss, but which does not appear to affect her physical functioning. The Ministry found that the doctor and psychologist did not provide enough evidence to determine that the Appellant has 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 finding work and/or working, 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.

In this case, the Appellant was diagnosed with bilateral broadband hearing loss which according to the doctor who assessed her and completed the PR is moderate to severe. The evidence from the Appellant, the doctor and the psychologist is that even with hearing aids she has difficulty communicating. Thus, according to the Appellant and the psychologist, the Appellant's ability to socialize is restricted. However, the Panel finds that, in terms of physical functioning and mobility, there is no evidence of limitations. Also, the Appellant's evidence about how her impaired hearing and headaches impact her functioning outside her home, was not confirmed by the doctor or psychologist. Therefore, the Panel finds that the Ministry reasonably determined that there was not enough evidence to determine that the Appellant has a severe physical impairment.

#### **Mental Impairment**

The Appellant submitted that she feels depressed and disappointed about her inability to communicate with people because of her hearing problems. She has considered suicide. She also reported symptoms of depression and anxiety to the psychologist, who noted impacts on cognitive and emotional functioning.

The Ministry noted that the doctor did not diagnose the Appellant with a mental impairment and the psychologist reported that the Appellant's impairments have a moderate, minimal or no impact on cognitive and emotional functioning. The Ministry determined that the doctor and psychologist did not provide enough information to determine that the Appellant has a severe mental impairment.

#### *The Panel's Findings*

The Appellant reported symptoms of depression and anxiety, and thoughts of suicide, but the Panel finds that the doctor did not diagnose the Appellant with any mental impairment or assess any impacts to daily functioning from a mental impairment. In addition, the psychologist's report of impacts on cognitive and emotional functioning range from moderate to no impact. The psychologist did report that the Appellant has marginal functioning with her immediate social network in that she has little social contact and that she has very disrupted functioning with her extended social networks. However, the Panel finds that this is the only information about any mental impairment impacts on the Appellant's daily functioning. There is nothing about restrictions to other daily activities, such as taking medications, paying bills, making shopping or food choices, which might be impacted by a mental impairment. Therefore, the Panel finds that the Ministry reasonably determined that there was

not enough information to determine that the Appellant has a severe mental impairment.

### **Restrictions to Daily Living Activities**

The Appellant submitted that her hearing impairment makes it difficult to communicate and socialize. She does not go out alone. She relies on her son to help with shopping and to take her out. He is also her caretaker.

The Ministry reviewed the PR and the AR, and determined that it does not have enough evidence from the doctor and psychologist to establish that the Appellant's impairment directly and significantly restricts her daily living activities 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 the Appellant's severe impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. In this case, the prescribed professionals are the doctor who completed the PR and the psychologist who completed the AR. Daily living activities are defined in section 2(1) of the EAPWDR and are also listed in the PR and in the AR.

In the PR, the doctor wrote "unknown" regarding any restrictions the Appellant had in her ability to manage daily living activities. The psychologist did not complete the section in the AR for restrictions to daily living activities and wrote "not assessed". The psychologist only noted restrictions to the Appellant's ability to function in her immediate and extended social networks. Based on this lack of information from the two prescribed professionals, the Panel finds that the Ministry reasonably determined that it did not have enough evidence from the prescribed professionals to establish that the Appellant's impairment directly and significantly restricts her daily living activities continuously or periodically for extended periods.

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

The Appellant submitted that she relies on her son to help with daily tasks and he is her caretaker.

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 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. In this case, there is no information from the prescribed professionals about any help that the Appellant needs or receives, except that she uses hearing aids. Therefore, the Panel finds that, based on the lack of evidence, the Ministry reasonably concluded that it could not determine that the Appellant needs significant help from other persons to manage her 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.