

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 8, 2014 which found that the appellant did not meet two 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 and that she has a severe physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- 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 evidence before the ministry at the time of the reconsideration decision included:

- 1) Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated July 21, 2013, a physician report (PR) and an assessor report (AR) both dated July 18, 2013 and completed by the appellant's general practitioner who has known the appellant for approximately 3 months;
- 2) Medical Report- Employability dated July 18, 2013;
- 3) Form completed by the general practitioner and dated December 20, 2013 ("the Form"); and,
- 4) Request for Reconsideration dated December 19, 2013.

Diagnoses

In the PR, the appellant was diagnosed by her general practitioner with spinal DDD [degenerative disc disease] and L3/4 disc bulge. There was no diagnosis included in the PR of a mental health condition.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that the appellant has been prescribed medication that interferes with her daily living activities, that it "may cause sedation."

In the AR, the general practitioner reported that:

- The impairments that impact the appellant's ability to manage DLA are: "low back pain and stiffness and left leg numbness."
- The appellant is independent in all tasks of several DLA, including moving about indoors and outdoors, personal care, paying rent and bills, and managing her medications.
- For basic housekeeping, the appellant requires continuous assistance from another person or she is unable to do either laundry or basic housekeeping.
- For shopping, the appellant is independent with 3 tasks, namely reading prices and labels, making appropriate choices and paying for purchases, while requiring periodic assistance from another person with going to and from stores and requiring continuous assistance with carrying purchases home.
- For meals, the appellant is independent in 2 of 4 tasks, or meal planning and safe storage of food, and requires periodic assistance from another person with food preparation and cooking.
- For managing transportation, the appellant is independent with getting in and out of a vehicle, and requires periodic assistance from another person with using public transit and using transit schedules and arranging transportation.
- In terms of social functioning, the appellant is independent in all aspects, namely making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

In her self-report, the appellant wrote that:

- She has a hard time walking. She cannot do housework, laundry, gardening or cooking.
- She cannot do the things in life that she used to do like gardening, walks, shopping, visiting her mother in another community.
- She likes cooking but now it takes her four times longer to cook something.

In the Medical Report- Employability, the same general practitioner indicated that:

- The appellant's primary medical condition is left-sided sciatica.
- The restrictions specific to this medical condition are "no lifting, carrying, bending and twisting."

In the Form signed by the general practitioner on December 19, 2013, he indicated that:

- The DLA that are restricted continuously are: meal preparation, basic housework, daily shopping, and mobility outside the home.
- The explanation regarding the restrictions is that the appellant "has a cerebral aneurysm and L3/4 disc herniation and radiculopathy. This limits mobility as well as standing and sitting for prolonged periods and bending and twisting and lifting."

Need for Help

In the AR, the general practitioner reported that the help required for DLA is provided by the appellant's family. In the section of the report indicating assistance provided through the use of assistive devices, none of the items are indicated but the general practitioner noted: "patient would benefit from a bath seat."

In her self-report, the appellant wrote that:

- She needs help doing housework, cooking and laundry.

At the hearing, the appellant submitted a letter from her mother dated February 4, 2014 in which she wrote that, since the appellant's aneurysms many years ago, her health has suffered. She has tried to continue working, keeping up her home, and caring for her children and the appellant's mother helped when she could. The appellant's body is "shutting down more each year." The appellant's mother lives in another community and she travels to the appellant's home on a regular basis to help her catch up with her laundry, vacuuming, and regular cleaning as she has been unable to keep up. The appellant's mother stated that it is obvious that the appellant is unable to be employed. It is sad to see her trying to do things although she is in pain.

At the hearing, the appellant and her advocate stated that:

- The ministry found that the appellant has a severe physical impairment and it is reasonable to assume that she, therefore, has significant restrictions and needs help with those activities.
- The appellant needs "help with everything" and "likely age has lots to do with it." Her leg is getting more painful. It is getting worse.
- She had cerebral aneurysms after the birth of each child and she has had seizures ever since then, which are controlled by medications. After the second aneurysm, she had no feeling in her leg and she could not move it.
- She needs someone at home with her at all times, either her room-mate or her daughter, to help her get out of a chair or out of bed. They help her get up and around. Her leg is "a real problem."
- If her room-mate or daughter was not at home, she would not do anything. She would lie in bed or sit in a chair.
- Either her room-mater or her daughter does the laundry and the housekeeping.
- The appellant can do a bit of cooking but she cannot stand for too long and then she has to sit down. She cannot make dinner since it takes her 20 minutes longer each time she makes it.

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- Lifting up something or going up or down stairs is “the worst.” Lifting causes back pain and carrying involves walking.
 - The appellant’s mother visits for two weeks at a time and she helps with things around the home.
 - The appellant does not use a cane or other assistive device for her mobility.
 - Her family doctor retired and she was referred to the doctor who completed the reports for the PWD application. He did not have her previous file when he completed the reports, but had received the file prior to completing the additional Form dated December 20, 2013.

The ministry did not object to the admissibility of the letter from the appellant’s mother. The panel admitted the letter as further detail of the assistance provided to the appellant and, therefore, in support of the information and records before the ministry on reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not meet all the criteria in Section 2 of the EAPWDA, 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 has a severe physical impairment but 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.
- (2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of
- (a) medical practitioner,
 - (b) registered psychologist,
 - (c) registered nurse or registered psychiatric nurse,
 - (d) occupational therapist,
 - (e) physical therapist,
 - (f) social worker,
 - (g) chiropractor, or
 - (h) nurse practitioner.

At reconsideration, the ministry was satisfied that the information provided is evidence of a severe physical impairment.

Restrictions in the ability to perform DLA

The appellant's position is that her severe physical impairment directly and significantly restricts her ability to perform DLA and she requires the significant assistance of another person, namely her room-mate and her daughter, to perform many DLA. The advocate argued that the decision in *Hudson v. EAAT*, 2009 BCSC 1461 is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA and there is no statutory requirement that more than two DLA be restricted. As well, even if the physician or assessor does not tick a specific box on the PWD application form, the evidence must be reviewed in full, including narrative portions, to see if eligibility can be found elsewhere. The advocate argued that, according to *Hudson*, any ambiguity in the interpretation of the EAPWDA must be resolved in favour of the appellant.

The ministry's position is that the evidence of the prescribed professionals does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods of time. The ministry argued that the general practitioner indicated in the AR that the appellant requires continuous assistance with basic housekeeping and carrying purchases home and that she requires periodic assistance with going to and from stores, food preparation and cooking, and transportation; however, no information is provided to explain the type, frequency, the degree or the duration of the assistance required. The ministry argued that the general practitioner indicated that the appellant is able to independently manage all other areas of DLA. The ministry argued that

the general practitioner reported that the appellant is independently able to manage all areas of social functioning, and she has good functioning in both her immediate and extended social networks. The ministry argued that the general practitioner did not provide information in the Form dated December 19, 2013 regarding the type, degree or the frequency of the assistance that the appellant requires to manage her DLA.

Panel Decision

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 DLA, continuously or periodically for extended periods. In this case, the appellant's general practitioner is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing any of these forms has the opportunity to directly indicate which, if any, DLA are significantly restricted by the appellant's impairments, continuously or periodically for extended periods.

The evidence of the appellant's general practitioner is set out in the PR and AR as well as the additional Form dated December 20, 2013, at which time the appellant states the general practitioner had the benefit of reviewing the appellant's previous medical file. The general practitioner reported in both the AR and the Form that the appellant is independent and not restricted with all tasks of managing her personal finances, performing personal hygiene and self care, managing her personal medications, and in her social functioning. The appellant stated at the hearing that she needs someone at home with her at all times, either her room-mate or her daughter, to help her get out of a chair or out of bed. However, the general practitioner indicated in the AR that the appellant is independently able to perform transfers in/out of bed and on/off of chair, and section 2(2)(b) of the EAPWDA requires the opinion of the prescribed professional regarding restrictions to DLA.

In the AR, the general practitioner reported that, for preparing her own meals, the appellant requires periodic assistance from another person with 2 of 4 tasks, namely food preparation and cooking, while being independent with meal planning and safe storage of food. In the Form, the general practitioner indicated that the appellant is continuously restricted with meal preparation and commented that her impairment limits her standing and sitting "for prolonged periods" and bending, twisting and lifting. At the hearing, the appellant stated that she can do "a bit of cooking" but she cannot stand for too long and then she has to sit down. She cannot make dinner since it takes her 20 minutes longer each time she makes it. In her self-report, the appellant wrote that she likes cooking but now it takes her four times longer to cook something. The panel finds that the ministry reasonably concluded that while the general practitioner indicated continuous restrictions with the physical tasks of the meals DLA, the appellant stated she is able to do some cooking, and there is no information provided to explain the degree or duration of the assistance required at other times.

In the AR, the general practitioner reported that the appellant is independent with moving about indoors and outdoors, while indicating in the PR that the appellant has a functional skill limitation of walking less than 1 block unaided. In the Form, the general practitioner agreed that the appellant is restricted continuously with mobility outside the home. The appellant stated at the hearing that she does not use a cane or any assistive device for her mobility. The appellant stated that her daughter and her room-mate help her get up and around inside, while the general practitioner did not indicate restrictions with the appellant's mobility inside the home. The panel finds that there was no additional information provided regarding the assistance that the appellant receives with indoor or outdoor mobility.

The general practitioner reported in the AR that the appellant requires periodic assistance from another person with 2 out of 3 tasks of using public transportation facilities, namely using public transit and using transit schedules and arranging transportation. The appellant is assessed as independent with getting in and out of a vehicle. In the Form, the general practitioner did not indicate restrictions with use of transportation.

For shopping for personal needs, the general practitioner reported in the AR that the appellant requires continuous assistance with carrying purchases home and periodic assistance with going to and from stores, while being independent with the "mental tasks" of reading prices and labels, making appropriate choices, and paying for purchases. In her self-report, the appellant wrote that she cannot do the things in life that she used to do like gardening, walks, shopping, or visiting her mother in another community. The general practitioner indicated in the Form that the appellant is restricted continuously with daily shopping and also indicated that the appellant requires help to perform this activity. However, no explanation or description is provided by the general practitioner with respect to either the transportation or shopping DLA to elaborate on how much longer it takes the appellant or the frequency or duration of her need for assistance.

The general practitioner reported that, for performing housework to maintain her place of residence in acceptable sanitary condition, the appellant requires continuous assistance from another person or she is unable to do her laundry or her basic housekeeping. In the Form, the general practitioner confirmed the appellant is continuously restricted with the DLA basic housework. At the hearing, the appellant explained that either her room-mate or her daughter does the laundry and the housekeeping. The appellant's mother wrote in her letter that she visits the appellant on a regular basis to help her catch up with her laundry, vacuuming, and regular cleaning as the appellant has been unable to keep up.

Although there is no statutory requirement that more than two DLA be restricted, there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. The panel has reviewed all of the evidence, including the narrative portions of the reports, and finds that there is sufficient detail to establish direct and significant restrictions to the basic housekeeping DLA and one task of the shopping DLA. The panel finds that in the absence of details of the frequency or duration of the assistance required with the tasks of food preparation and cooking, moving about indoors and outdoors, using public transit and transit schedules, and going to and from stores, the ministry reasonably determined that there is insufficient information to support periodic restrictions for extended periods of time. The appellant is assessed as performing the balance of her DLA independently with no need for assistance. The panel concludes that the ministry reasonably determined that there is not sufficient evidence in the opinion of the prescribed professional to establish that the appellant's physical impairment directly and significantly restricts 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, primarily her room-mate and daughter, to perform DLA. The advocate argued that the general practitioner confirmed in the Form that the appellant requires help to perform several DLA as a result of continuous restrictions.



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 from other persons.

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 or the significant help or supervision of another person or the services of an assistance animal in order to perform a DLA.

The general practitioner indicated in the AR that help required for DLA is provided by the appellant's family and the appellant clarified that her daughter, mother, and room-mate help her. In the section of the report indicating assistance provided through the use of assistive devices, none of the items are indicated but the general practitioner noted that the appellant would benefit from a bath seat. In the Form, the general practitioner also agreed that the appellant requires help to perform some activities. While the panel finds that the evidence of the prescribed professional establishes that the appellant requires some assistance with tasks of some DLA, the panel also 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.

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.