

### PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 4 July 2014 determined that the appellant did not meet 2 of the 5 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, that her impairment is likely to continue for at least 2 years and that the appellant had a severe impairment. However, the ministry was not satisfied that the appellant's combination of physical and co-existing mental conditions, in the opinion of a prescribed professional, directly and significantly restricted her daily living activities (DLA) either continuously or periodically for extended periods. The ministry was also not satisfied that as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help 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 ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

The following evidence was before the ministry at the time of reconsideration:

- A 4 page PWD Application self report dated 2 April 2014 completed and signed by the appellant stating the following:
  - She has been suffering from anorexia nervosa for 8 years with unhealthy weight loss and overall physical and mental deterioration.
  - As a result she also suffered from depression and anxiety, losing her freedom, independence, sense of belonging and happiness.
  - Her day to day activities have become strenuous chores and simple tasks turn into massive hardship.
  - She was hospitalized 6 times in respect of this condition in order to restore her weight.
  - She developed osteoporosis and has lost most of her strength.
  - She is unable to lift heavy objects and standing, walking around, moving for long periods of time causes the entire lower half of her body to ache.
  - She gets anxious as a result of nearly every situation or obstacle that arises, no matter how minor it could be.
  - She now has difficulties concentrating and she tends to lose focus and give up after a certain period of time.
  - She wants to restore her weight to a healthy level but the idea of being in a healthy weight range terrifies her.
  - She would like to get back to work but her condition makes it hard for her emotionally and physically as past experiences showed that this had been her biggest downfall and she had ended up in hospital. For instance she attended college full time when living on her own in a major centre and ended up being hospitalized and forced back to her home community to live with her mother.
  - When she works or studies full time, she cannot balance her eating habits to satisfy her needs.
  - When she returned to her home community, she lost the support she had in the larger centre and the services in the regional centre closest to her community are very limited and she would like to be able to return to the large centre and reconnect with her support group.
- A 8 page Physician Report (PR) dated 7 May 2014 completed and signed by the appellant's physician indicates the following:
  - Specific diagnosis: Anorexia nervosa, depression, anxiety and osteoporosis since 2006. The physician comments: "Long standing history of anorexia with co-existing depression / anxiety."
  - Health history: Significant struggle with anorexia since 2006 and developed a pattern of food restriction and excessive exercise pervading her daily life. She was hospitalized a number of times for dangerously low BMI (Body Mass Index). "She has significant issues with depression / anxiety that make it difficult for her to function in a normal capacity." She should be focusing on recovering from her eating disorder and achieving / maintaining a healthy weight. She also has cognitive slowing and fatigues easily which interferes with her functioning.

- Her height is 173.5 cm and she weighs 45.3 kg.
- For prescribed medication and/or treatments interfering with her DLA, the physician indicates: "Caloric counts, documenting everything she eats." And the length is "Indefinite at this point".
- She does not require any prostheses or aids for her impairment.
- The impairment will continue for 2 years or more. The physician indicates that the impairment is of indefinite duration. Her condition is chronic and ongoing since 2007. She had multiple hospitalizations and is at high risk for "problems re: decreasing weight requiring readmission" and she is regularly followed for medical reasons.
- She can walk more than 4 blocks on a flat surface unaided.
- She can climb more than 5 steps unaided.
- She is limited to lifting 2 to 7 kg.
- She has no limitation for remaining seated.
- She has no difficulties communicating.
- The physician identifies 4 areas of significant deficits with cognitive and emotional function:
  - Emotional disturbance; motivation; attention or sustained concentration; significant issues re: body image / weight / self esteem and comments: Some general cognitive slowing.
- Even though the physician did not complete the assessor's report, he did not complete section E, DLA of the form.
- In Additional Comments he writes that the appellant has been severely affected by anorexia nervosa and her clinical condition is extremely tenuous as she has been unable to maintain a healthy weight and is at very high risk of re-hospitalization. He adds that she cannot function normally due to fatigue / weakness / cognitive slowing / depression / anxiety and it is important that she focus on her health. Working would place undue stress on her and she would likely deteriorate.
- The physician has seen the appellant 2 to 10 times during the one year she has been her patient but the appellant has been a patient at that clinic since 2004.
- An 11 page Assessor Report (AR) dated 24 April 2014 completed and signed by a nurse practitioner, indicating the following:
  - The appellant lives with family, friends or caregiver.
  - The appellant's ability to communicate by speaking, reading, writing and hearing is good.
  - In terms of mobility and physical ability, the appellant is independent walking indoors, walking outdoors, climbing stairs, standing and carrying and holding; she needs periodic assistance from another person for lifting but no explanation is provided.
  - In terms of cognitive and emotional functioning for someone who has an identified mental impairment or brain injury the AR indicates:
    - No impact for consciousness, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.
    - Minimal impact for bodily functions, memory and motor activity.
    - Moderate impact for emotion, impulse control, insight & judgment and executive.
    - Major impact for attention/concentration and motivation.
    - The assessor comments that due to her low BMI, the appellant has moderate to major impairments with cognitive and emotional functioning.
  - In terms of assistance required related to impairments that directly restrict the appellant's ability to manage DLA, the assessor indicates that she is independent for all areas except

for 4 where she needs periodic assistance from another person: regulate diet, making appropriate choices, carrying purchases home and meal planning. There are no additional explanations or description but the assessor comments that the appellant requires assistance for meal planning due to her eating disorder and that she had had guidance in the past by a nutritionist.

- She is independent in 4 out of 5 areas of social functioning, requiring periodic support / supervision to deal appropriately with unexpected demands but without any explanation or description.
- She exhibits marginal functioning in terms of impact of her mental impairment on her relationship with her immediate social network but very disrupted functioning – overly disruptive behaviour: major social isolation in her relationship with extended social networks.
- No assistance is provided by other people and no such assistance is necessary.
- The appellant does not use any assistive device nor is such equipment needed.
- No assistance is provided by assistance animals.
- The assessor provided additional information: The appellant has been struggling with anorexia for the past several years and at this time she is not physically able to work in a capacity that would require prolonged standing or any lifting. She adds that due to her extremely low BMI, her cognitive functioning is impaired and her main goal at present is weight restorations and the assessor indicates that she feels it is what her focus needs to be.
- The assessor's source of information is through office interview with the appellant and she has known her since 2011, having seen her over 11 times during the previous year. She explains that she has seen the appellant in clinic every 1 to 2 weeks in the past 3 years aside from the time she spent in hospital. She provides her with weighing, physical examination, laboratory testing and prescription refills and liaises with other clinics.
- In her request for reconsideration dated 24 June 2014 and signed by the appellant, she indicated:
  - She agreed not being able to lift anything over 15lbs does not impact her daily functioning requirements because she does not constantly have to lift objects that are over 15lbs but she noted that very few jobs do not require lifting objects that are more than 15lbs and the jobs that are left are mediocre, hard-labour and minimum wage.
  - She also agreed she could walk short distances and climb more than 5 steps but stated that it did not mean she was in a physical condition to perform a full-time job.
  - She recently strained her knee simply walking around town for an appointment and it had not yet healed and she was basically house-bound but was referred to a physiotherapist.
  - She urged the ministry to contact a number of resource people that would know more about her health condition than her physician who only met her 3 times.
  - In terms of DLA, she stated she had been making her eating choices based on advice she received by a dietitian. She had a daily caloric goal to meet and had weekly check-ins to assess her condition. This will take place until her weight is fully restored, meaning an extended period of time.
  - She wrote: "I am still nowhere near a healthy enough weight to handle the demands of working full time, let alone try and maintain a regular eating schedule while trying to handle a job."
  - She felt her medical condition was not properly assessed by people who are not fully educated about anorexia and believe this is a minor ailment, not impacting her life at all,

the reality being quite the contrary, as it impacts her every second of her day.

- She had not worked for over 2 years because of that eating disorder and still had “extreme difficulty dealing with the demands of full and even part time work”.
- She provided a list of contact people to the ministry since she did not have time to track them down.
- A prescription by a physician dated 24 June 2014 for topical medication for her knee.
- A doctor’s certificate from a physiotherapy clinic dated 24 June 2014 to the effect that her right knee is in pain and treatment is recommended.
- A doctor’s certificate dated 24 June 2014 indicating that the appellant was seen in his office on 6 and 24 June regarding her right knee and that further investigations were pending.
- An Imaging Requisition signed by a physician, undated but stamped on 24 June 2014, requesting x-ray for her right knee, indicating right medial joint line pain and osteoporosis.

In her Notice of Appeal dated 14 July 2014, the appellant wrote that the ministry did not fully understand the severity of her impairment, that they were misinformed as to how much it impacts her DLA, that she is unable to live independently as a result. She indicated recovering from a knee injury caused by her anorexia and receiving physiotherapy.

At the hearing, the appellant testified that:

- In her community, she has no access to professional eating disorder physicians but only to a walk-in clinic and sees a locum on duty.
- She does not have access to a vehicle to drive to her region’s major centre – 2 hours away, but must take a bus that runs only on Mondays and Wednesdays while her specialist is only there on Tuesdays and Thursdays. She can hardly afford that bus ride as it costs her \$20 return.
- Her physical conditions worsened since her knee injury as she has to see a physiotherapist each week and she believes it was caused by muscle loss as a result of her eating disorder. Each visit costs her \$10, amounting to \$40 per month that she can hardly afford.
- Her mother can drive her around her community but as of September she will not be in a position to continue.
- She needs a PWD designation to increase her monthly assistance as she can barely live with her actual assistance of \$600 per month. She can barely pay her rent and food and needs the supplement to help her be independent.
- She did not have access to a psychiatrist to complete the physician and the assessor reports and she believes a specialist would have been in a better position to describe the impact of her impairment on her DLA.
- Since her incident with her knee, her conditions has significantly deteriorated but now it is improving but she fears that there will be lasting consequences for her knee, in the long term. She can only walk 1 or 2 blocks now and can hardly climb stairs, having to do it slowly without bending her injured knee.
- She has to eat 6 times a day – takes ½ hour to eat a snack and 1 hour to eat a meal and that interferes with her ability to find employment, as she could not have the free time to eat on the job. She prepares her own meals.
- She generally sits in her mother’s apartment waiting for the next meal and she is a slow eater as eating too fast gives her a stomach ache. There is nothing to do in her home community and she is not able to get out. She does have a very limited social life but is able to socially interact.

- The purpose for her to get PWD status would be to help her to be independent, being able to move to other communities and have access to more resources for her condition.
- She does not currently need help from another person or device or animal for her DLA.
- She spent some time in a major city hospital where she could see a psychiatrist but she discharged herself after 1 ½ month.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration as providing more details as to the appellant's condition and its impact on her DLA.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria for designation as a PWD because it was not satisfied that the appellant had a severe physical and mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR, which are set out below.

Section 2 of the EAPWDA states:

**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;

"**health professional**" repealed

"**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 of the EAPWDR provides further clarification:

**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
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

The ministry acknowledges that the appellant meets 3 of the conditions for PWD designation in that she is at least 18 years of age, her impairment is likely to continue for 2 years or more and that she has a severe physical and mental impairment. However, the ministry argues that she does not meet the 2 other criteria.

#### *Daily Living Activities (DLA):*

The ministry argues that there is not enough evidence demonstrating that the severe impairment directly and significantly restricts the appellant's DLA since she is described as "independent" in a large majority of them and that she does not need continuous assistance. The few restrictions, for instance for lifting and walking, do not amount to being significant and while the AR mentions that the appellant had assistance with meal planning, regulating diet, making appropriate choices and carrying purchases home. She has had some assistance from a nutritionist in the past but there is no explanation as to why this assistance is not required anymore. The AR mentions that the appellant's is restricted in terms of being able to work but the PWD criteria is not intended to assess employability or vocational abilities. The ministry notes some restrictions in terms of social functioning but is not satisfied that it amounts to a direct and significant restriction.

The appellant argues that she is significantly restricted in her DLA because of her anorexia and that this eating disorder impacts every second of her life, for extended period of times. She cannot work because she needs to restore her BMI and would need to eat many times during the day and that no job would be able to accommodate that condition. Further, she argues that she cannot lift more than 15lbs, which would also prevent her from getting employment. She states she needs the resources



provided for those who have a PWD designation to allow her to be independent and have access to the medical facilities that can deal with her eating disorder. She argues that her medical condition is quite rare and that there are only a few specialists in that field and she did not have access to such specialists to complete the reports that she required to provide to the ministry and that the ministry did not get all the information needed to properly assess her condition.

The panel notes that the criteria for a PWD designation are clearly established by law and do not include employability or the ability to access employment. In terms of DLA, the PR does not directly address those issues as the physician did not complete that part of her report and did not really provide any concrete information in that respect. The AR states that the appellant is independent in the vast majority of DLA and in the few instances where it is indicated that she needs periodic assistance from another person, it does not explain the nature, extent and duration of the assistance required. The appellant in her testimony confirms that she is mostly independent and does not need any particular help from other people.

The panel as well notes that the appellant lives in an isolated community and a region where there are few services for someone who suffers from an eating disorder because of the absence of professional care; however, the evidence does not demonstrate that this impacts directly on her impairment. The panel also notes that the appellant checked herself out of professional care after 1 ½ month. There is no evidence provided that would support the appellant's argument that the prescribed professionals that completed the PR and the AR did not provide adequate information and that a specialist or a psychiatrist would be in a better position to assess her DLA. It is incumbent on the appellant to select the appropriate prescribed professionals and provide evidence in that respect. While the panel acknowledges the severe impact of her medical condition, the evidence does not support a direct and significant restriction to her DLA, continuously or periodically for extended periods.

Given the evidence provided by the appellant's physician and the prescribed professional, and taking into account the appellant's explanations, the panel concludes that the ministry reasonably determined that the evidence was not sufficient to determine that the appellant's severe impairment directly and significantly restricted her ability to perform DLA either continuously or periodically for extended periods.

*Help required to perform DLA:*

The ministry argues that since DLA are not significantly restricted, it cannot be determined that significant help is required from other persons and that no assistive devices are required nor an assistance animal.

The appellant did not argue that she needed help to perform her DLA but rather that she needed additional financial resources to become more independent and be able to access the specialized care that her medical condition needs.

The panel finds there is little if any evidence the appellant needed help to perform her DLA. In her testimony, she stated she did not need or have help from other people or any assistive device. Thus, the panel finds the ministry reasonably determined the appellant did not meet the legislative test of

the need for help arising from significant restrictions to perform DLA either continuously or periodically for extended periods.

*Conclusion:*

The panel comes to the conclusion that although the appellant has a severe mental and physical impairment, the ministry reasonably determined she did not establish that this impairment directly and significantly restricted her ability to perform DLA either continuously or periodically for extended periods and that, as a result of those restrictions, she required help to perform those activities under s. 2(2) of the EAPWDA. Consequently, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.