



PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) July 25, 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 oral consent of the Appellant, an observer from her advocate's office attended but did not participate in the hearing.

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

1. Appellant's PWD application consisting of:

- Her self-report dated June 2, 2014.
- A physician's report and an assessor's report both completed on June 8, 2014 by a doctor (hereafter "Dr. C") who indicated that the Appellant has been his patient for 2 years and he had seen her 11 or more times in the past year.

2. The Appellant's request for reconsideration dated July 14, 2014 with:

- A statement by her dated July 14, 2014
- A report by Dr. C dated July 8, 2014 consisting of handwritten answers to prepared questions.

For this appeal the Appellant's advocate submitted a written statement with information about the Appellant's circumstances, arguments in support of her appeal and a letter dated September 8, 2014 from Dr. C. In the September 8, 2014 letter, Dr. C wrote that the Appellant asked him to provide further details regarding her long-term conditions and the impact these conditions have on her activities of daily living. He stated that upon reviewing the original application and further information from the Appellant, it was clear that the original application was lacking in some detail and clarity. The Appellant also testified at the hearing. The Ministry did not object to the admissibility of the testimony, the written statement or the doctor's letter.

The Panel finds that the Appellant's testimony, as well as the information in the written statement and in the doctor's letter about the Appellant's health conditions and how they impact her daily functioning substantiate and support the evidence that was before the Ministry at the time of reconsideration. Therefore, the Panel admits the testimony and the written information in accordance with section 22(4) of the Employment and Assistance Act. The information about the Appellant's conditions is summarized below and the arguments are summarized in Part F Reasons of this decision.

The Ministry relied on and reaffirmed its reconsideration decision.

Diagnoses

In the physician's report Dr. C diagnosed the Appellant with COPD [chronic obstructive pulmonary disease], diarrhea NYD [not yet determined], chronic renal failure, and substance abuse. Then in the July 2014 letter, Dr. C referred to the Appellant's history of depression, social isolation, and loss of motivation and anxiety issues. In the September 8, 2014 letter, the doctor described the Appellant's conditions as: asthma/COPD, severe chronic diarrhea (which is likely IBS [irritable bowel syndrome]), depression with anxiety and renal insufficiency.

Physical Impairment

In her June 2014 self-report, the Appellant described her disabilities as follows:

- Has a very dysfunctional bowel; messes her pants and beds sometimes; has to go to the washroom almost 7 times a day.
- Cannot go anywhere: has to be near a washroom at all times when she goes out.

- Has very bad asthma (COPD); cannot do things when it is hot outside; hard to go out for walks or ride her bike; she has problems breathing.

For her reconsideration request, the Appellant provided the following information:

- Since being diagnosed with COPD, has been significantly restricted in carrying out her daily living activities.
- Is constantly fatigued and exhausted; often needs to take breaks while completing tasks.
- Sometimes is unable to carry out weekly activities all together.
- Usually has her daughter help with chores such as laundry, basic house cleaning, grocery shopping and food preparation; if her daughter is unable to come, the task does not get completed.
- She requires continuous support and assistance as confirmed by Dr. C.
- Has prescriptions for hypertension, COPD and Acid reflux;
- Is very easily tired; lacks interest and motivation to leave her apartment and socialize with others.
- Realizes her disabilities have essentially led to her social isolation.

The following additional information was provided in the advocate's appeal statement and the Appellant's oral testimony at the hearing:

- Severe COPD causes her to experience shortness of breath during any type of physical activity, not only upon exertion.
- Breathing requires effort and at times experiences tightness in chest due to COPD.
- Continues to suffer from stomach pain and cramps; symptoms not helped by medication.
- Chronic renal disease appears to be stable and substance abuse is in remission, but there is risk of relapse.
- Current level of physical functioning made possible with the use of all her medications – not Ministry's erroneous assumption that physical functioning would increase with medications.
- Able independently to walk about 2 or more blocks, but has to stop every couple of steps and tries to lean on something; takes ½ an hour to walk about 3-4 blocks to a store.
- Can lift about 5 lbs. but needs to stop for several breaks, sit down and catch her breath; cannot hold, carry or lift on a repetitive basis.
- Due to COPD remains constantly exhausted and chronically fatigued.
- When standing more than a couple of minutes will often lean on something if a seat is unavailable.
- Limitations exist regardless of weather conditions where she lives.
- Often experiences drowsiness and disorientation as side effects of prescribed medications.
- Limits the number of times she leaves her apartment to about once a week because she is easily exhausted and also because she has to always be near a washroom; some days she remains chronically fatigued so that she is unable to get out of bed.

In the physician's report, Dr. C described the Appellant's impairments as follows:

- Moderate-severe COPD – gets short of breath.
- Diarrhea illness, general - investigation negative, no help from medications – likely irritable bowel syndrome (“IBS”).
- Has diarrhea several times a day and needs to be close to a washroom.
- Renal disease is stable; substance abuse in remission with risk of relapse.

- Can walk unaided on a flat surface for 2-4 blocks; can climb 2-5 stairs; can lift 5-15lbs.; can remain seated 2-3 hours (often needs to use washroom).

More recently, in the September 8, 2014 letter, the doctor wrote the following about the Appellant:

- COPD causes shortness of breath as well as fatigue with any physical activity such as walking.
- Is able to walk two blocks, but often has to stop due to shortness of breath; can climb a few stairs unaided but again has to stop due to shortness of breath – all irrespective of the weather and not limited to hot days.
- Is able to lift between 5-15 lbs. but not on repetitive or ongoing basis; unable to carry this weight for any distance.
- Is on maximum doses of her inhalers, so medications would not further increase her physical functional abilities.
- Can stand independently, but not for long periods – not more than ½ hour without having to sit.
- IBS causes severe cramps and abdominal pain as well as diarrhea on a daily basis; no effective treatments to this point; impacts her ability to perform sustained tasks or be out in the community for any length of time – needs constant access to a bathroom.
- In his opinion, these limitations speak to a severe degree of physical impairment; at the time of the initial application he did not have all of the information necessary to accurately assess the Appellant's home situation.

Mental Impairment

At the hearing, the Appellant said that she initially did not tell Dr. C. that she had been treated for depression by her previous doctor who prescribed medication that she stopped taking because of its effects. She did not want to resume taking such medications. The Appellant said that she did tell Dr. C about her depression, anxiety and social isolation for the reconsideration submissions. The following information is in the Appellant's reconsideration statement, the appeal submission and from her oral testimony:

- Lacks interest and motivation to leave her apartment and socialize with others.
- Realizes her disabilities have essentially led to her social isolation; is socially isolated due to severe restrictions on her mobility; has no family or friends in social support system except her daughter.
- Inability to carry out daily living activities and support/take care of herself has led to depression.
- Symptoms of depression and anxiety continue even with medications; medications make her feel drowsy and disoriented.

In the physician's and assessor's report, the doctor indicated that the Appellant did not have any significant deficits with cognitive and emotional functioning. In his July 2014 letter, the doctor wrote that the Appellant has history of depression/anxiety with loss of motivation and social isolation. She also takes 5 medications. Dr. C. wrote, in the September 8, 2014 letter, that he overlooked a couple of sections of the physician's and assessor's report. He stated that it is his understanding that the Appellant often has difficulty maintaining concentration and tends to get confused and overwhelmed easily. This often leads to an inability to fully understand questions asked and disorganization in her speech and thinking. She is not motivated to get out of the house and is socially isolated because of this.

Daily Living Activities

In the advocate's appeal statement, the following information about the Appellant's ability to manage daily living activities was provided:

- Symptoms such as shortness of breath, tightness in chest, severe stomach pains and cramps, constant fatigue and exhaustion significantly restrict or prevent her from carrying out daily living activities.
- Is unable to independently carry out activities such as shopping; cannot shop daily or make numerous trips a week because too strenuous and would have to carry only one or two items at a time. Relies on help with carrying and delivering groceries once a week.
- Rarely leaves her apartment and limits outdoor visits to necessary tasks.
- Trip to doctor's office leaves her severely exhausted so unable to get out of bed the next day.
- Completes some tasks such as bathing and toileting at an extremely slow pace, with several long breaks; mobility remains severely restricted.
- Severely restricted with completing laundry and basic housekeeping; daughter takes laundry to Laundromat and also vacuums, sweeps, mops, dusts, and cleans the kitchen, tub and toilet.

In the physician's report the doctor noted that the Appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities. In the assessor's report, Dr. C reported the Appellant's ability to function as follows:

- Walking indoors and outdoors, and climbing stairs take significantly longer – gets short of breath; needs to be close to washroom.
- Standing – independent.
- Lifting, and carrying and holding – needs periodic assistance – gets short of breath.
- Independently manages personal care except for toileting for which she needs assistive device; i.e., needs to be close to washroom.
- Needs periodic assistance with laundry and basic housekeeping – gets short of breath with exertion.
- Needs periodic assistance with going to/from stores and with carrying purchases home – gets short of breath with exertion; independently manages reading prices/labels, making appropriate choices, paying for purchases.
- Independently manages preparing meals, managing personal finances, managing personal medications.
- Needs to be near bathroom when using public transit; independently manages to get in/out of a vehicle and to use transit schedules – difficult for her to travel in the community due to frequent diarrhea.
- "N/A" [Not Applicable] for social functioning; has good functioning with her immediate social network and marginal functioning with her extended social network.

Dr. C provided the following information in his July 8, 2014 report:

- Dressing and grooming take 2 times longer than typical to complete; bathing takes 3 times longer and toileting takes 5 times longer.
- Meal preparation takes 2 times longer.
- Transfers in/out of bed and transfers in/out of chair take 2 times longer.
- Laundry and basic housekeeping – "bundle – gets help from her daughter".
- Meal planning takes 2 times longer; food preparation and cooking take 4 times longer.
- Getting in/out of vehicle takes 3 times longer and using public transport takes 3 times longer.
- Gets short of breath due to COPD; feels fatigue all the time; needs breaks to complete daily

living activities.

- Needs continuous assistance with the above activities; that is, needs help continuously with cleaning, groceries and food preparation.
- Takes 5 different medications.

In September 2014, Dr. C wrote that at the time of the initial application he did not have all of the information necessary to accurately assess the Appellant's home situation. He now feels that:

- She requires continuous assistance rather than periodic completing daily living activities such as house cleaning, grocery shopping and doing laundry.
- Combination of her medical symptomatology, such as restricted mobility and social isolation makes it difficult for her to independently care for herself and she often has her daughter assist her with daily tasks.
- In some cases she is unable to complete tasks on her own.
- In his opinion, the Appellant suffers from severe impairments that directly and significantly restrict her from carrying out daily living activities.

Help with Daily Living Activities

Dr. C noted in the physician's report that the Appellant does not need any prostheses or aids for her impairment. In the assessor's report, Dr. C indicated that the Appellant receives help from family and friends, and does not have an assistance animal. In July 2014 and in September 2014 Dr. C wrote that the Appellant needs continuous help with living activities such as house cleaning, grocery shopping, food preparation and doing laundry. Her daughter assists her.

The Appellant stated that her daughter helps with weekly tasks such as grocery shopping, house cleaning and laundry. Otherwise, these tasks would not get done. She needs her daughter's continuous help with these activities.

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.

Severe Physical Impairment

The Appellant's advocate argued that the Ministry did not reasonably consider all of the information provided by the Appellant and her doctor. The Ministry also erroneously assumed that the Appellant's functioning could be increased with medication when in fact the Appellant's current level of physical functioning is possible because she is using the maximum amount of her medications. The Appellant's position is that her evidence and her doctor's establish that she does have a severe physical impairment which significantly restricts her physical functioning abilities.

In its reconsideration decision, the Ministry wrote that it reviewed the Appellant's self-reports and the doctor's reports. The Ministry noted that medication information was provided with the reconsideration information and then it wrote that it was reasonable to assume that the Appellant was

able to increase her physical functionality with the use of medications. The Ministry determined that the information provided established a moderate degree of physical impairment.

The Panel's Findings

The diagnosis of a serious medical condition does not in itself establish a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment restricts the Appellant's functioning. This includes evidence from the Appellant as well as from a prescribed professional, who in this case is Dr. C.

Dr. C. wrote that the Appellant suffers from asthma/COPD, severe chronic diarrhea (likely IBS) and renal insufficiency. In the more recent report of September 4, 2014, Dr. C. stated that the COPD causes shortness of breath as well as fatigue with any physical activity such as walking. The doctor also explained, in the September letter, that he had more information about the Appellant's impairments than when he completed the physician's and assessor's reports for the PWD application. In September 2014, the doctor wrote that the Appellant can walk 2 blocks and climb a few stairs, but has to stop due to shortness of breath, regardless of the weather. The Appellant can lift between 5-15 lbs but not on a repetitive basis or for any distance. Dr. C. stated that medications would not further increase the Appellant physical functioning. In his July 2014 letter, the doctor also noted that activities requiring physical abilities such as dressing, grooming, bathing, meal preparation, transferring in/out of bed, transferring in/out of chairs, and going to and from stores take from 2 to 5 times longer than typical. The doctor wrote that the Appellant needs breaks to complete activities and for some activities needs continuous assistance. In addition, IBS causes severe cramps and abdominal pain as well as diarrhea on a daily basis with no effective treatments to this point. These conditions impacts the Appellant's ability to perform sustained tasks or be out in the community for any length of time. In his opinion, these limitations speak to a severe degree of physical impairment.

The Appellant said that she can walk about 2 blocks, but has to stop every couple of steps to take a breath and the same with climbing stairs. She also stated that she is constantly fatigued and exhausted, needing breaks while completing tasks. Sometimes she is unable to do any tasks and other times she stays in bed for a day to recover. Also her diarrhea and bowel illnesses limit her ability to do things or leave her apartment because she has to be near a bathroom.

The Panel finds that there was no sufficient basis in the information in the record for the Ministry to make the assumption that medications would improve the Appellant's functioning. In fact, the evidence from the doctor and the Appellant is that she is taking the maximum amount of inhaler dosage. Further, the Panel finds that when all of the evidence from the Appellant and especially the more recent reports from Dr. C about the many and sustained restrictions to the Appellant's physical functioning are considered, it was not reasonable for the Ministry to determine that the Appellant does not have a severe physical impairment.

Severe Mental Impairment

The Appellant's advocate submitted that the Appellant also has a severe mental impairment. Her inability to support and take care of herself has led to her depression and her social isolation.

The Ministry wrote that based on the information provided it could not determine that the Appellant had a severe mental impairment.

The Panel's Findings

Dr. C reported that the Appellant has a history of depression, social isolation, and loss of motivation and anxiety issues. The doctor also wrote that the Appellant often is unable to fully understand questions asked, is disorganized in her speech and thinking, and is socially isolated. However, other than these symptoms, and the Appellant's social isolation and loss of motivation, the doctor provided no other information about how the Appellant's mental health conditions impact her cognitive and emotional functioning. The Appellant described her physical impairments as leading to her social isolation and causing her depression. Again, however, other than restricting her in her ability to get out of her apartment, the Appellant did not provide any information about the impact these conditions have on her cognitive abilities; for example, taking medications as required, making appropriate decisions in social functioning or coping with unexpected demands. Therefore, when all of the information is considered, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant's advocate argued that the definition of daily living activities in section 2(1)(a) of the EAPWDR should be applied to the Appellant's circumstances, rather than the Ministry's list of tasks in the assessor's report. The advocate submitted that in the Appellant's case it was not reasonable to expect that she would perform each of the activities listed in the assessor's report on a daily basis. For example, because of the Appellant's severe physical impairments, she cannot go shopping every day and try to carry home one or two items. Instead, she relies on her daughter to do her shopping about once a week. Therefore, the advocate argued that the Appellant's severe impairments must be assessed based on "shop for personal needs" as listed in section 2(1)(a)(iii) of the EAPWDR; likewise for performing housework to maintain the person's place of residence in acceptable sanitary condition. The advocate submitted that, in this case, the prescribed professional, Dr. C, confirmed that the Appellant is directly and significantly restricted in her ability to independently care for herself. She needs continuous assistance with a number of the defined activities.

The Ministry wrote that, although it acknowledges that the Appellant has certain limitations that result from her medical conditions, it found that the information provided did not establish that a severe impairment significantly restricts her ability to perform daily living activities continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion confirming that the Appellant's severe physical or mental impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. Daily living activities are defined in section 2(1) of the EAPWDR. The prescribed professional in this case is Dr. C.

The Panel notes that, in his two more recent reports, Dr. C provided details of the Appellant's restrictions and did not just check off boxes on a form. In July 2014, the doctor reported that in all areas of personal care, shopping, meals and transportation, the Appellant takes 2-5 times longer and for basic housekeeping and carrying purchases she needs help. The doctor also answered "continuous" in response to whether the Appellant needs periodic or continuous assistance. He added that she needs help continuously with cleaning, groceries and food preparation. The Appellant explained that she physically cannot shop on a daily basis and she relies on her daughter to do the

weekly shopping, cleaning tasks and food preparation.

In September 2014, the doctor described the Appellant as having a severe degree of impairment. The COPD (shortness of breath and fatigue) and IBS result in her inability to perform sustained tasks or be out in the community. He also wrote that, after having more information about the Appellant's home situation, he felt that she requires continuous assistance rather than periodic with completing activities such as house cleaning, grocery shopping and doing laundry. He added that the combination of her medical symptomatology, such as restricted mobility and social isolation, makes it difficult for her to independently care for herself.

When the more recent combined information from Dr. C is considered, the Panel finds that the doctor confirmed that the Appellant needs continuous assistance with the following activities listed in section 2(1)(a) of the EAPWDR: prepare own meals, shop for personal needs and perform housework to maintain her place of residence in acceptable sanitary condition. The doctor also reported that the Appellant has severe impairments in moving about indoors and outdoors, performing personal hygiene and self care, and using transportation facilities. Therefore, based on Dr. C's assessments, the Panel finds that the Ministry did not reasonably determine that the information did not demonstrate that the Appellant's severe physical impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant's advocate submitted that the Appellant needs continuous help with a number of the living activities defined in the EAPWDR. Her daughter helps her continuously with those otherwise they would not get done.

The Ministry's submitted that the information did not establish that the Appellant's needs the significant help of another person, any assistive devices or an assistance animal. Also, its 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. Dr. C confirmed that the Appellant needs continuous help with a number of the activities defined in section 2(2)(1)(a) such as prepare own meals, shop for personal needs and perform housework to maintain her place of residence in a sanitary condition. He also confirmed that the Appellant's daughter provides such help. Therefore, based on Dr. C's reports, the Panel finds that the Ministry did not reasonably determine that the Appellant did not need significant help from another person.

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 not reasonably supported by the evidence. Therefore the Panel rescinds the decision in favour of the Appellant.