



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated August 15, 2014 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet three of the five criteria required for PWD designation as set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) section 2. The ministry found that the appellant meets the criteria of being 18 years of age or older and, that in the opinion of a medical practitioner, her impairment is likely to continue for two or more years. However, the ministry determined that, based on the information provided, the following criteria as set out in section 2(2)(b) of the EAPWDA were **not** met:

- The minister is satisfied that the appellant has a severe mental or physical impairment;
- In the opinion of a prescribed professional, the appellant's impairment significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- As a result of the restrictions, the appellant requires the significant help or supervision of another person to perform the DLA restricted by her impairment.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application, containing the following three parts:
 - The appellant's Self Report (SR) completed February 17, 2014;
 - The Physician Report (PR) dated February 18, 2014 completed by the appellant's family doctor who has known the appellant for more than 2 years and indicated he had seen her 2-10 times in the previous year; and
 - The Assessor Report (AR) dated March 18, 2014 completed by the appellant's family doctor.
2. Attached to the PWD application were the following reports regarding the appellant's medical history of a brain tumor and a pelvic abscess:
 - A letter dated August 5, 2010 from a neurologist to the appellant's former family doctor regarding July 20, 2010 consultation with the appellant, in which the neurologist confirms the appellant is blind in her left eye, the vision in her right eye is normal, and she had suffered a seizure;
 - A radiology report dated August 22, 2010 of an MRI of the appellant's head;
 - A letter from a gynecologist to the appellant's former family doctor dated August 4, 2010 regarding the admission of the appellant to hospital in July 2010 for treatment of an ovarian abscess;
 - Reports of pelvic ultrasounds of the appellant dated October 4 and November 17, 2010;
 - A letter from a gynecologist to the appellant's former family doctor dated November 4, 2010 regarding a consultation with the appellant; and
 - A letter from a gynecologist to the appellant's former family doctor dated December 30, 2010 regarding the treatment of the appellant's ovarian abscess.
3. The appellant's request for reconsideration dated July 18, 2014 on which she wrote that she had received further information from her family doctor and specialist indicating that her optic atrophy on her left side is irreversible and to which were attached the following documents:
 - A letter dated July 29, 2014 from the appellant's family doctor (the same physician who completed the PR and AR portions of the PWD application);
 - A letter dated October 21, 2009 to the appellant's former family doctor from the neurologist (subsequently retired) who performed surgery to remove a tumor in the appellant's brain;
 - A radiology report dated March 16, 2012 of an MRI of the appellant's head; and
 - A letter dated July 18, 2014 from a case manager at the local mental health team where the appellant's husband receives treatment and who knows the appellant.

Prior to the appeal hearing, the appellant submitted a medical history summary prepared by her family doctor and dated September 3, 2014 on which it is indicated that the appellant's "current problem list" is "blindness – left sided – post meningioma resection, frontal lobe 2009," "brain cancer – meningioma – removed 2009 persistent headaches, dizziness, post op" and "hand weakness optic nerve injury – right arm-post meningioma removal 2009." The medical history summary also indicates that the appellant's surgical history is "craniotomy: resection meningioma 03 Sept 2009 Post op – confirmed left optic nerve atrophy." The ministry did not object to the admission of the medical history summary. The panel admits the medical history summary under section 22(4) of the

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Employment and Assistance Act as it restates information that was before the ministry at the time the decision under appeal was made.

At the appeal hearing, the appellant told the panel that her current family doctor does not know her as well as her previous doctor, although he speaks her language and she does not need a translator at her appointments. She said that she has not been honest with her family doctor about the severity of her health problems and the effects her conditions have on her daily living – she is concerned and afraid about her health. She told the panel that the case manager of her husband’s mental health team, who is a nurse, knows her and her family well and has urged her to apply for PWD designation.

The following is a summary of the evidence from the PR and AR, including the relevant medical reports, regarding the appellant’s impairments as they relate to the three PWD criteria at issue. The panel has also included reference to the appellant’s SR in the PWD application, as well as her submissions at the hearing.

Severity of impairments (criteria set out in subs. 2(2) EAPWDA)

In the PR completed February 18, 2014, the appellant’s family doctor diagnosed her with a brain tumor and epilepsy since 2007 and this is confirmed in the information in the consultation and MRI reports from the neurologists. In the July 29, 2014 letter, the family doctor confirms that she has lost vision in her left eye since July 2007 and in the September 3, 2014 medical history summary, the family doctor notes, “hand weakness optic nerve injury.” In his comment regarding the severity of the appellant’s conditions, the appellant’s doctor wrote in the PR, “4 brain tumors removed 2009, seizures since.” The appellant’s doctor indicates that she is taking anti-convulsant medication “for life” that interferes with “cognitive function.”

In the functional skills assessment in the PR, the family doctor indicated that the appellant could walk 4+ blocks unaided on a flat surface, that she could climb 5+ steps unaided, that she could lift 2-7 kg (5 to 15 lbs) and could remain seated for less than 1 hour. The mental health case worker reported in her July 18, 2014 letter that the appellant could not lift more than 2 kg after the surgery and she has to instruct her husband to help her. The family doctor indicated that the appellant had no difficulties with communication. In the AR completed by the family doctor on March 18, 2014, he indicated that the appellant’s ability to communicate was satisfactory in the areas of writing and hearing, and good in speaking and reading. The family doctor indicated that the appellant was able to independently perform all areas of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. In his July 29, 2014 letter, the family doctor writes that the appellant has difficulty walking unaided on a flat surface and requires assistance from her husband or daughter or by using a walking aid for balance. This information was also repeated by the mental health case worker in her letter of July 18, 2014 and by the appellant at the hearing.

In the PR, the appellant’s family doctor indicated that she has significant deficits with cognitive and emotional function in the following areas: memory, perceptual psychomotor, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration. The family doctor left the comments section regarding the identified deficits blank. In the AR section regarding the appellant’s cognitive and emotional functioning, the family doctor indicated that the appellant’s mental impairment had no impact in the areas of bodily functions and psychotic symptoms and a minimal impact in all of the other listed areas (consciousness, emotion, impulse control, insight and judgment,

attention/concentration, executive, memory, motivation, motor activity, language, other neuropsychological problems and other emotional or mental problems). The family doctor left the comments section blank.

At the hearing, the appellant described the effects of her conditions to the panel. She said that because she cannot see out of her left eye, she has difficulty when she is walking (she has to make sure she turns her head so her right eye can see when crossing streets), she always has to wear glasses, does not have a good sense of direction and does not go out by herself and must rely on others to help guide her. She went to see an eye doctor who said that the vision in her right eye is declining but she does not want to go often because she has to travel on public transit and needs someone to accompany her. She said that she experiences pain and weakness in her right arm which makes it difficult for her to lift and carry things, but it is not all the time. She said that when it gets cold outside, she gets severe headaches because of the brain tumors. She has had epileptic seizures in the past and she is afraid she might lose consciousness. She believes she has more tumors in her brain, but she does not know this with certainty because she does not have a neurologist at this time and is afraid to find out. The appellant stated that, with her vision problems and how her condition may affect her in the future, no one will hire her for work.

Ability to perform DLA (criteria set out in subs. 2(2)(b) EAPWDA)

In the PR, the appellant's family doctor indicated that the appellant's impairments restrict her ability to perform the DLA of management of medications, although he did not indicate whether this restriction was continuous or periodic. In the PR, beside the DLA of management of finances, the family doctor has written "?". In the AR, the family doctor wrote the comment "daily living ok, managing finance may be a bit hampered" in response to the question "what are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living activities?" In the section of the AR indicating the degree of restriction the appellant's impairments cause on her DLA, the appellant's family doctor indicated that the appellant was independent in all of the listed tasks of the DLA of personal care, basic housekeeping, meals, medications, and transportation.

For the DLA of shopping, the family doctor has indicated that the appellant can independently perform all of the listed tasks except "making appropriate choices" and has checked she requires periodic assistance, but did not provide any commentary. For the DLA of paying rent and bills, the family doctor has indicated that the appellant requires periodic assistance for all of the 3 listed tasks, but has not provided any commentary. In his July 29, 2014 letter, the family doctor indicated that the appellant requires assistance shopping for groceries and banking and that she has memory difficulties and requires daily reminders from her child to take her medications. In the July 18, 2014 letter, the mental health case manager also confirms that the appellant's daughter prompts her to take her medication. At the hearing the appellant said her daughter reminds her to take her medications and she explained that when she goes to the bank, she doesn't want anyone to know she has memory problems, so she will prepare her deposit and withdrawal slips before she goes in. At the hearing, the appellant said that she is able to dress herself, but will bathe with her child's assistance. She said she is able to do some shopping and prepare simple meals.

In the PR, the appellant's family doctor indicated that the appellant's impairments restrict her ability to perform the DLA of social functioning continuously. In the AR, the family doctor indicated that the appellant required periodic support/supervision for all of the listed aspects of social functioning, that



she had good functioning in her immediate social network and marginal functioning in extended social networks, but did not provide any commentary.

Assistance required/provided (criteria set out in subs. 2(2)(b)(ii) EAPWDA)

In the section of the AR describing the assistance provided for the appellant, the family doctor wrote "N/A" beside all three areas (assistance provided by other people, through the use of assistive devices, and by assistance animals). At the hearing, the appellant told the panel that her child and her friends will help her with her shopping and that she will bathe with her child's assistance so that she doesn't fall.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment, that her physical impairment in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods, and, as a result of those restrictions she requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

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.

The following section of the *EAPWDR* applies to this appeal:

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(2) For the purpose 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.

Existence and severity of impairments

The appellant told the panel that her family doctor does not know her as well as her former family doctor and she has not been honest with her family doctor about the extent to which she is affected by her impairments. The appellant told the panel that she has had a portion of her brain removed (the surgery to remove the tumor) and that as a result she can't see out of her left eye, she has memory problems, and has had epileptic seizures because she forgot to take her medications. All of these things mean that she has limited her activities and has to rely on her friends and her child.

In the reconsideration decision, the ministry based its determination that the appellant's impairments were not severe on the information provided by the appellant's family doctor in the PR completed February 18, 2014 and in the AR completed March 18, 2014, as well as the additional information submitted by the doctor and mental health case manager in July 2014 and the medical reports. In the functional skills section of the PR, the family doctor notes some restriction with lifting (limited to 2-7 kg or 5-15 lbs) and remaining seated (less than one hour), but in the AR indicates independence in all aspects of mobility and physical abilities. The ministry also noted that the family doctor wrote in his July 29, 2014 letter that the appellant has difficulty walking on flat surfaces and requires assistance with balance. The ministry determined that the information provided did not establish the appellant has a severe physical impairment.

In terms of the appellant's mental impairment, the ministry noted the answers of the appellant's family doctor in the PR that she had significant deficits with cognitive and emotional functioning in certain areas, but that in the AR, the impacts to the appellant's cognitive and emotional functioning were minimal (none were indicated to be moderate or major). The ministry also noted the information from the appellant's family doctor and mental health case manager in July 2014 that she has memory difficulties and requires help prompting from her child to take her medications. The ministry was not satisfied the information provided was evidence of a severe mental impairment.

Analysis and decision

The legislation provides that the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a) of the EAPWDA). The appellant's family doctor confirmed in the PWD application and in his July 29, 2014 letter that her impairment is

brain tumor and epilepsy and loss of vision in her left eye and that the conditions will continue for at least 2 years. The issue before this panel is whether the ministry reasonably concluded that the information provided does not confirm that the appellant has a severe physical and/or mental impairment.

In the PWD application form, the ministry has provided a definition of "impairment" which, although it is not set out in the applicable legislation, offers guidance in considering the existence and severity of an applicant's impairment. The ministry states, "impairment" is a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." To determine the severity of an impairment, there is both a cause – the impairment itself – and an effect – the degree to which it restricts the ability to function independently, effectively, appropriately or for a reasonable duration.

Physical impairment

In this case, the appellant's physician has diagnosed her with a brain tumor, epilepsy and loss of vision in her left eye, together with hand weakness. The panel understands that the impact of the appellant's brain tumor and its removal may have both mental and/or physical components. The panel will address the physical component here. The physical impairments the appellant suffers are loss of vision in her left eye and hand weakness. In the July 29, 2014 letter, the family doctor notes that the appellant's loss of vision affects her ability to walk unaided on flat surfaces and as a result, she requires assistance for balance. In the PR and AR, the family doctor has noted the appellant is restricted in lifting items heavier than 2-7 kg (5-15 lbs) and that she is independent with her mobility, using no aids for her impairment, or assistive devices.

The panel notes that the legislation provides that the determination of the severity of an impairment is at the discretion of the minister, taking into account all of the evidence, including that of the appellant. However, the starting point must be the medical evidence. The panel notes that the information provided by the appellant's family doctor regarding the impact of her loss of vision is consistent – the appellant suffers some restriction in her ability to lift heavier objects and to walk unaided on flat surfaces. The appellant's family doctor confirms that she is able to independently perform the tasks of the DLA associated with physical ability (personal care, basic housekeeping, shopping – other than making appropriate choices, meals, and transportation).

The panel finds that the ministry's determination that the information provided does not establish a severe physical impairment is reasonable.

Mental Impairment

It is established that the appellant has had a brain tumor which was removed and which has affected her vision in her left eye. The panel will address the mental impacts of this impairment in this section. As stated previously, the panel notes that the determination of the severity of an impairment is at the discretion of the minister, taking into account all of the evidence, including that of the appellant, but that the starting point must be the medical evidence. In the PR, the physician confirmed that the appellant has significant deficits with cognitive and emotional function in several areas (memory, perceptual psychomotor, emotional disturbance, motivation, impulse control, motor activity and



attention or sustained concentration), but did not provide any commentary to explain these answers. In the AR, the family doctor's answers regarding the impact of the appellant's mental impairment on her cognitive and emotional functioning indicates that her impairment has a minimal impact in all but two of the listed areas, for which it has no impact (bodily functions and psychotic symptoms). The family doctor does not provide any commentary to explain his answers. As well, in the AR the family doctor indicated that the appellant required periodic support in all aspects of social functioning, with good functioning with her immediate social network, and marginal functioning in her extended social networks, but without providing any commentary.

In both the PR and the AR, the family doctor indicates that the appellant requires some periodic assistance with managing her personal finances, making appropriate choices when shopping, and taking medication (although in the AR, the family doctor indicated that she was able to independently perform all listed tasks). In the AR completed by the family doctor on March 18, 2014, he indicated that the appellant's ability to communicate was good or satisfactory in all areas. In the recent information from the appellant's family doctor and the mental health case manager, there is information restating that the appellant has memory difficulties such that she requires daily reminders from her child to take her medications. Based on this evidence, the panel finds that without further information from the appellant's family doctor explaining the severity or restriction of her brain tumor on her "ability to function independently, effectively, appropriately or for a reasonable duration," the ministry's determination that it has not been established that the appellant has a severe mental impairment is reasonable.

Direct and significant restrictions in the ability to perform DLA.

The appellant told the panel that because of her loss of vision and her brain tumor, she finds it difficult to perform some of her DLA, in particular walking outdoors and any tasks associated with memory, such as banking and taking her medications. She relies on help from her family (husband and child) and friends when walking and shopping.

The ministry determined that, based on the information provided by the appellant's family doctor, the ministry did not have enough evidence to confirm that the appellant's impairments significantly restrict her ability to perform her DLA continuously or periodically for extended periods. The ministry referred to the fact that the family doctor in the PR indicated that the appellant's impairment continuously restricted her social functioning, that it restricted her management of medications but he did not indicate if this was continuous or periodic, and that he was unsure if it restricted her management of finances. The ministry noted that in the AR, the family doctor indicated that the appellant could independently perform most of her DLA, but required periodic assistance making appropriate choices shopping, and banking, budgeting, paying rent and bills (all listed tasks of paying rent and bills) but did not provide information on how often the appellant requires assistance. The ministry further noted the more recent information that the appellant requires assistance from her child shopping and being reminded to take her medications, but that the majority of her DLA are considered independent and there is no indication that they take her significantly longer than typical to perform.

Analysis and decision

The legislation requires in subs. 2(2)(b) of the EAPWDA that a prescribed professional confirm that the appellant's impairments directly and significantly restrict her ability to perform her DLA



continuously or periodically for extended periods. The panel notes that although a prescribed professional may indicate that, because of a restriction, an individual requires assistance either continuously or periodically for extended periods, this does not necessarily meet the legislative test of being a "direct and significant restriction." The DLA to be considered for a person with a severe impairment are, as set out in subs. 2(1) of the EAPWDR, as follows:

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework;
- Move about indoors and outdoors;
- Perform personal hygiene and self care;
- Manage personal medication;

With additional DLA for a severe mental impairment listed as follows:

- Make decisions about personal activities, care or finances; and
- Relate to, communicate or interact with others effectively.

In the appellant's case, when all of the information from the prescribed professional (the appellant's family doctor) is read together, the family doctor has indicated that the appellant can independently perform the majority of the tasks of all her DLA associated with a physical impairment. For the DLA specifically related to persons with a mental impairment, the appellant's family doctor has indicated she requires assistance with the task of making appropriate choices while shopping, being reminded to take her medications, managing her finances, and with social functioning. The family doctor indicates that the appellant's child reminds her to take her medication on a daily basis in the July 29, 2014 letter. However, for the other DLA of making appropriate choices, managing finances and social functioning, there is no information provided by the family doctor to indicate the extent to which she requires assistance (the duration of it) or the nature of the assistance she requires. For managing finances, the family doctor wrote that the appellant is "maybe a bit hampered."

The panel finds reasonable the ministry's determination that the information provided does not demonstrate a severe mental or physical impairment that in the opinion of a prescribed professional significantly restricts her ability to perform her DLA continuously or periodically for extended periods.

Help with DLA

The appellant told the panel that she needs help from her child to remember to take her medications and that she needs help when walking outside (she needs a friend, her husband or her child to help her keep her balance and to guide her). The ministry noted that the appellant's family doctor indicated in his July 29, 2014 letter that she uses walking aids when walking outdoors for balance, but that "the use of assistive devices such as walking aids does not in itself establish a severe impairment." The ministry determined that as it had not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The legislation requires in subs. 2(b)(iii) that in the opinion of a prescribed professional, as a result of



the appellant's restrictions, the appellant requires help to perform DLA. The panel notes the evidence before the ministry was that the appellant needs to be reminded to take her medications and requires assistance walking unaided on flat surfaces. In the section of the AR describing the assistance provided for the appellant, however, the family doctor wrote "N/A" beside all three areas (assistance provided by other people, through the use of assistive devices, and by assistance animals). The panel finds that the ministry's determination that because it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA, is reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.