



## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) July 18, 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 consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

1. Appellant's PWD application dated March 20, 2014 consisting of:

- Her letters dated March 20, 21, and 23, 2014.
- A physician's report and an assessor's report both completed on March 20, 2014 by a doctor (hereafter "Dr. W") who indicated that she has known the Appellant for more than 20 years. In the assessor's report the doctor noted that she had seen the Appellant once in the past year.
- Letter from a second doctor (hereafter "Dr. P") dated February 7, 2014.

2. Appellant's July 8, 2014 request for reconsideration with the following note: tendonitis summary 2007/2008 onset and repeated treatments to current; 2013 – 3 surgeries, 2 right hand and 1 left hand; 2014 – 1 surgery scheduled for July 24, 2014; aching joints onset 2008; and with a July 4, 2014 letter.

For this appeal, the Appellant submitted a letter dated July 23, 2014 with a photo of her right knee and a letter dated August 10, 2014. Both letters have written arguments to support her appeal and additional information about her impairments. The Panel admits the additional information about the Appellant's impairments pursuant to section 22(4) of the Employment and Assistance Act because it is consistent with and is in support of the evidence the Ministry had at reconsideration. The Ministry relied on its reconsideration decision.

The Panel reviewed all of the information in the appeal record and summarized it below under the applicable PWD criteria.

### Diagnoses

In the physician's report, the doctor diagnosed the Appellant with tendonitis in both hands onset 2008, osteoarthritis in the fingers onset 2006 and previous bilateral mastectomy and radiation (2008).

### Physical Impairment

The Appellant described her impairments in the various letters as follows:

- Her whole hands are affected by tendonitis, with inflammation more pronounced in her digits, particularly around the thumb area.
- Treatments for cancer and reconstructive surgeries have affected her left arm.
- Combination of these conditions adversely impacted her upper body strength.
- For many years has experienced chronic pain and inflammation in both elbows, along with the joints in her right shoulder and knee, left hip, neck and sometimes her back; also soreness and stiffness, and pain are constant; has visible, obvious lump on left hip for over 2 years.
- Incurs pain/and or discomfort performing the following tasks: handwriting, typing, playing guitar, using scissors/blades, carrying groceries, chopping or cutting hard vegetables, opening doors and jars, using keys to unlock door, pulling some pants up/down, buttoning pants/shirt, tying shoes, picking up knapsack, turning pages and snapping fingers, holding heavier books.
- Needs assistance means to complete some tasks; e.g., to carry groceries home uses a knapsack, a wheel buggy and/or small portable dolly, or broader handled bag for light

groceries; organizes loads by weight and limits amount carried; needs help lifting 2 litre containers; opens jars with special tools/techniques or asks other people; will use shoes with Velcro fastening, t-shirts instead of shirts with buttons.

- Takes longer to get ready in the morning and to get dressed.
- Hands are crucial to many things in her life, including her job which sometimes required lifting heavy objects; wear and tear on her hands from strenuous use in various trade/employment capacities significantly affect her dexterity through inflammation, pain and sensitivity to temperature extremes.
- Difficulty using crowded buses because cannot use high placed strap handles.
- Cannot carry garbage pail downstairs or lift it to empty it; cannot do cleaning tasks without experiencing pain; when her back hurts she cannot bend to clean the tub.
- Needs help with some aspects of gardening.
- Can walk unaided, although when weather is changing or when weather is inclement, almost chronically experiences pain in various joints.
- Affected aesthetically –fingers are bigger overall; knuckles are chunkier presenting onset of osteoarthritis; digits often swollen.
- Soaks hands in hot or warm water or uses heat and/or exercises fingers by flexing them; stretches arms/other muscles; uses warm gloves most of the year; fingers are tingling and numb on rainy days. Uses pain medicine, ice packs and diet for pain and inflammation relief. In the past had massage therapy, physiotherapy for her knee and did exercises at home.
- Rests prior to and during active period; paces and restricts her physical activities; takes frequent breaks or has longer period of inactivity; e.g., a day to recuperate.
- Without or with reduced job prospects and/or skills due to her physical conditions, she cannot manage her personal finances.
- On balance her impairments are severe, although she has temporary reprieves.
- Had surgeries on several fingers and a fourth one scheduled for August 11, 2014; had repeated treatments with injections and inflammation still persists

In the physician's report, Dr. W referred to notes from Dr. P who was the treating physician for the Appellant's hand issues. Dr. W described the Appellant's impairments as follows:

- 5+ years of painful hands due to tendonitis and arthritis; upper body strength compromised by bilateral mastectomy – therefore now unable to lift, drive continuously for hours and present job not possible; very restricted employment possibilities.
- 3 surgeries in 2008 by Dr. P. to release tendons and digits.
- For walking unaided on a flat surface checked the box for "not at all"; for climbing stairs unaided "5+"; for lifting "under 5 lbs"; and for remaining seated "no limitations". Based on Dr. W's other reports, the Panel considers this note about walking to be an error.

Dr. P described the Appellant's conditions as follows:

- Has some limitations in her hand function secondary to a combination of recurrent chronic tendonitis, trigger fingers and bilateral mastectomies.
- Should be able to do basic computer work, using mouse and keyboard, but prolonged data entry likely to exacerbate tendonitis. Able to use hands for light pinch and grasp (small materials); use hand tools in limited manner but unable to do heavy hand use in repetitive way – e.g., heavy lifting.
- Limited in playing musical instruments and cursive writing to short intervals.
- Cold weather will exaggerate stiffness in fingers limiting outdoor activities.

- Has had multiple steroid injects and surgeries for tendonitis; likely to be ongoing problem.

### Mental Impairment

Dr. W reported:

- No diagnoses of any mental health condition and no significant deficits with or impacts to cognitive and emotional functioning, except for minimal impact on emotion -“upset by limitations (and embarrassed)” and “affects income/financially stressed due to income”.
- Ability to communicate in all areas is good.

### Daily Living Activities

In the physician’s report, Dr. W. reported that the Appellant:

- Had not been prescribed medications and/or treatments that interfere with her daily living activities, but wrote – several injections to tendons as needed; not daily.
- No restrictions to daily living activities, namely personal self care – “slower”, meal preparation – “slower”, management of medications, basic housework – “slower”, daily shopping “slower”, mobility inside and outside the home, use of transportation and social functioning.
- Takes longer to perform daily duties and has pain in both hands.

In the assessor’s report, Dr. W. reported that the Appellant:

- Independently manages walking indoors and outdoors, climbing stairs and standing; and takes significantly longer with lifting, and with carrying and holding.
- Takes significantly longer with dressing and grooming – “more difficult to handle buttons, shoe laces are more intricate part of dressing;
- Takes significantly longer with basic housekeeping – problems with fine actions involving hands and lifting.
- Uses a pull cart and knapsack to carry purchases home.
- Takes significantly longer getting in/out of a vehicle and using public transit – unable to stand in bus; cannot hold traps etc., avoids full bus.

Dr. W. did not indicate whether the Appellant independently manages any of the listed daily living activities, or whether she needs continuous or periodic assistance. Dr. W. also did not complete the sections for meals, paying rent/bills, medications and social functioning.

### Help with Daily Living Activities

The Appellant described using aids for shopping and carrying groceries, such as a knapsack, wheeled buggy and dolly. She has used a knee brace for vigorous exercises. The Appellant also indicated that she gets help from her sister and roommate. She uses pain medication, diets, cold wraps, heat and other therapies to help with the pain and inflammation.

Dr. W. reported that the Appellant:

- Uses a grocery cart or pull carts for shopping due to her inability to carry; “would benefit from [illegible] devices such as Velcro closure on garments, shoes, computer assistance programs, bus pass for transport.”
- Has family and friends help as needed, but does not need assistance with daily living activities, an assistive devices or an assistance animal.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because she did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions she requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:  
2 (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either (A) continuously, or (B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires (i) an assistive device, (ii) the significant help or supervision of another person, or (iii) the services of an assistance animal.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

2 (1) For the purposes of the Act and this regulation, "daily living activities" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals; (ii) manage personal finances; (iii) shop for personal needs; (iv) use public or personal transportation facilities; (v) perform housework to maintain the person's place of residence in acceptable sanitary condition; (vi) move about indoors and outdoors; (vii) perform personal hygiene and self-care; (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances; (ii) relate to, communicate or interact with others effectively.

The Appellant argued that her *Charter of Rights and Freedoms* were violated because according to her, the Ministry did not indicate in its decision that more evidence was required and did not contact the prescribed professional for clarity. Under section 19.1 of the *Employment and Assistance Act* and section 44 of the *Administrative Tribunals Act*, this Tribunal does not have jurisdiction over constitutional questions. In addition, section 24(1) of the *Employment and Assistance Act* defines the jurisdiction of this Panel in this appeal; that is, the Panel must determine whether the Ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactments in the circumstances of the Appellant. Therefore, the Panel will consider the reasonableness of the Ministry's decision under the PWD criteria at issue in this appeal.

### **Severe Mental Impairment**

Dr. W diagnosed no mental health conditions and reported a minimal impact on only one area of cognitive and emotional functioning. The Panel therefore finds that the Ministry reasonably determined that the information did not establish a severe mental impairment.

### **Severe Physical Impairment**

The Appellant's position is that the chronic pain and inflammation she experiences constitute a severe physical impairment because of the impacts on her ability to do many daily tasks. She submitted that the information she provided is corroborated by her doctors. She also submitted that her impairments have affected her ability to work and she needs to pick up new job skills that will not be as taxing on her joints and hands, and not reliant on her upper body strength.

In its reconsideration decision, the Ministry wrote that it reviewed all of the information in the PWD application, the doctors' reports and the reconsideration submissions. The Ministry determined that, while the Appellant has some physical limitations, the information does not establish that she has a severe 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 daily functioning. This includes evidence from the Appellant as well as from a prescribed professional regarding the impairments and their impacts on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR. Also, the ability to work and/or look for work is not a criterion for PWD eligibility in section 2(2) of the EAPWDA nor is it listed among the daily living activities in section 2 of the EAPWDR.

The Appellant described the pain and inflammation in her hands and in her joints as chronic. She indicated that she can walk, although her abilities are limited in some weather. Her digits are often swollen and her fingers are tingling and numb on rainy or cold days. Also, her upper body strength has been compromised. The Appellant listed many tasks which cause pain and/or discomfort; e.g., handwriting, using scissors/blades, carrying groceries, chopping or cutting, opening doors and jars, buttoning pants/shirt, tying shoes and picking up heavier items such as a garbage pail. She submitted that she uses aids for some tasks, such as using a wheel buggy or portable dolly to carry groceries home. Also, it takes her longer to get dressed and she needs shoes with Velcro closures.

Dr. W described the Appellant's impairments as years of pain due to tendonitis in both hands, osteoarthritis in the fingers and compromised upper body strength. Dr. P noted that the Appellant has some limitations in her hand function secondary to a combination of recurrent chronic tendonitis, trigger fingers and surgeries. Dr. P. also wrote that the Appellant is able to use her hands for light pinch and grasp but is unable to do heavy hand use.

With respect to the impacts of the Appellant's impairments on her daily functioning, Dr. W. reported that they do not restrict any of the Appellant's daily living activities, only that some are slower, taking longer to perform. As for the Appellant's physical ability and mobility, Dr. W reported that the Appellant independently manages walking indoors and outdoors, climbing stairs and standing. Only lifting and holding take significantly longer. Therefore, the Panel finds that, although the Appellant

experiences restrictions in her ability to do various tasks, Dr. W. reported that the Appellant can independently manage areas of physical ability and mobility, and daily living activities requiring physical abilities. Therefore, the Ministry reasonably determined that there is not enough evidence to establish a severe physical impairment.

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

The Appellant's position is that her severe physical impairment restricts her ability to manage daily living activities, especially any tasks requiring lifting or carrying heavier items and any using her hands, such as dressing and housekeeping. She needs assistive devices and help from others.

The Ministry wrote that after reviewing all aspects of the physician's report and the assessor's report, it was not satisfied that the information demonstrates that a severe mental or physical impairment, in the opinion of a prescribed professional, significantly restricts the Appellant's ability to perform daily living activities either 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 mental or physical 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 and are also listed in the physician's and assessor's reports.

Dr. P and Dr. W are the prescribed professionals in this case. Dr. P only wrote that the Appellant is limited to using her hands for short intervals and for light loads. Dr. W, who has known the Appellant for 20 years, completed the physician's and assessor's reports. Dr. W reported that the Appellant independently manages walking indoors and outdoors, climbing stairs and standing, but does take significantly longer with lifting, and with carrying and holding. The doctor also reported that the Appellant's impairments do not restrict any daily living activities, and only that personal self care, meal preparation, basic housework and shopping are slower. Based on this information from the prescribed professionals, the Panel finds that the Ministry reasonably determined that the evidence does not demonstrate that the Appellant's impairments directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods.

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

The Appellant submitted that she needs help with certain daily living activities, including using aids for shopping and having her sister and roommate help with physical tasks. The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that significant help is required from other persons. Also, it noted that the information from did not establish that the Appellant requires any assistive devices, the significant help of another person or an assistance animal.

### *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. W reported that the Appellant does not need assistance with daily living activities, but would benefit from [illegible] devices, and a bus pass or transport. Dr. P provided no information about help that the Appellant may need.

Based on the evidence from this prescribed professionals, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help to manage her daily living activities.

**Conclusion**

Having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.