

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) August 20, 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 consisting of:
  - Her self-report dated January 24, 2014.
  - A physician's report and an assessor's report both completed on April 2, 2014 by the same doctor who indicated that she has known the Appellant since December 2013 and had seen her between 2-10 times in the past year.
2. Appellant's request for reconsideration dated August 1, 2014 with a statement.

In her notice of appeal, which the Panel accepts as the Appellant's submissions for this appeal, the Appellant wrote that she is chronically ill and can no longer support herself. Her symptoms occur daily and a reasonable assessment of the information would agree with her position.

The Ministry relied on its reconsideration decision

### *Diagnoses*

In the physician's report, the doctor diagnosed the Appellant with fibromyalgia onset 1997, chronic fatigue syndrome onset 2002, migraine onset 1998 and IBS [irritable bowel syndrome] onset 2004. The doctor diagnosed no mental health conditions.

### *Physical Impairments*

In her statements, the Appellant described her disabilities as follows:

- Body is in constant pain; has daily headaches, weekly migraines; chronic IBS symptoms.
- Cannot walk more than 20 minutes a day; has no muscle strength to do physical activity.
- Needs to lie down every few hours; also has to sleep for 12 hours a day to feel well enough to get up and take care of herself.
- Gets dizzy and has completely debilitating episodes daily; has to lie down immediately.
- Vision is poor, even with glasses.
- Has chronic outbreaks of cold sores, causing much pain and distress.
- Friends have to help with normal living activities that she is too weak to do herself; i.e., lifting, carrying etc.
- All symptoms have gotten worse over the last 14 years; has reached the end of the road regarding her independence; has struggled and suffered over the past years, earning below \$6,000 a year on her own; put off asking for help; wants to work and can't.
- Suffers daily from her many listed health problems, cannot physically or mentally function in the work world to support herself.
- To all questions asked by her doctor in the PWD application, she said "if my life depended on it, I guess I could" – e.g., lifting 5-15 lbs. or walking a block and back; however, she cannot do any of these things as a matter of daily occurrence.
- Her doctor did not look after her best interests medically; did not tell her to separate her pride and ego regarding her loss of physical independence; she fought against giving in to her illness and was trying to stay positive when the doctor asked questions.

The doctor provided the following information about the Appellant's impairment:

- Has difficulty performing daily living activities due to constant pain, chronic fatigue, poor quality of life due to constant tiredness, and low muscle strength.
- Can walk 1-2 blocks unaided; climb 5+ steps unaided, can lift 5-15 lbs. unaided and can remain seated less than 1 hour.
- Has limitations mostly due to pain (generalized); waiting for consultation with rheumatologist and fibromyalgia clinic.

#### *Mental Impairment*

The Appellant described her conditions as follows;

- Has difficulty thinking clearly; no longer has the clarity of mind to understand all the requirements to prove she cannot support living independently..
- Is worried and stressed because she cannot afford healthy food and has no sense of living security; cannot mentally function in the work world.

The doctor provided the following information about the Appellant:

- No difficulties with communication; speaking, reading, writing and hearing abilities are good.
- In the physician's report, indicated two significant deficits with cognitive and emotional functioning; that is, in the areas of memory and emotional disturbance (depression/anxiety); provided no details about these.
- No information in the assessor's report about any impairments; left assessment of impacts to cognitive and emotional functioning, social functioning and social networks sections blank.

#### *Daily Living Activities*

The doctor provided the following report regarding the Appellant's ability to manage daily living activities:

- Has been prescribed medications which interfere with her ability to perform such activities.
- Independently manages walking indoors and standing; needs periodic assistance walking outdoors and climbing stairs – leans on friend when having pain.
- Needs continuous assistance with lifting and periodic assistance with carrying and holding. – cannot carry more than 10 lbs.
- Independently manages all areas of personal care, meals, paying rent/bills and medications.
- Independently manages laundry; needs periodic assistance with light housework - asks friend to help when having a flare up.
- Needs periodic assistance with going to/from stores (leans on friend) and carrying purchases home (cannot carry heavy weight); independently manages reading prices/labels, making appropriate choices and paying for purchases.
- Needs periodic help with getting out of vehicle; independently manages using public transit and transit schedules/arranging transportation.
- Social functioning and social networks sections not completed by the doctor.

#### *Help Daily Living Activities*

The doctor reported that the Appellant :

- Gets help from friends.
- Needs a cane for ambulation when she has flare ups of her conditions.
- Does not have 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 Panel will consider the reasonableness of the Ministry's decision under the PWD criteria at issue in this appeal.

### **Severe Physical Impairment**

The Appellant's position is that she is chronically ill and has completely debilitating episodes daily from her many health problems. These health conditions severely restrict her ability to function and she must rest frequently. She submitted that she cannot as a matter of daily occurrence lift 5-15 lbs. or walk a block and back, and she needs friends to help her. The Appellant also submitted that she cannot function in the work world to support herself.

In its reconsideration decision, the Ministry wrote that the reports by the doctor are more in keeping

with a moderate degree of impairment and there was not enough information to establish 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.

The Panel noted that the Appellant wrote about her inability to work because of her conditions. 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 doctor diagnosed the Appellant with a number of conditions; that is, fibromyalgia, chronic fatigue syndrome, migraine and IBS. The Appellant wrote that her body is in constant pain and she daily gets completely debilitating episodes from her conditions, requiring her to immediately rest. The Appellant also stated that she cannot walk more than 20 minutes a day and has no muscle strength to do physical activity. She relies on friends to help her with normal living activities that she is too weak to do herself, such as lifting and carrying. The Appellant did not state how often she needs her friends to help.

The doctor wrote that the Appellant has difficulty performing daily living activities due to constant pain, chronic fatigue, poor quality of life due to constant tiredness and low muscle strength. The doctor also reported that the Appellant can walk 1-2 blocks unaided, climb 5+ steps unaided and can lift 5-15 lbs. unaided. She can independently manage walking indoors and standing, but needs periodic assistance walking outdoors and climbing stairs, leaning on friends when having pain. She needs a cane for ambulation when she has flare ups of her conditions. The Appellant also needs continuous assistance with lifting and periodic help with carrying more than 10 lbs. As for other daily activities requiring physical abilities, the Appellant independently manages all areas of personal care, meals, and laundry, but needs periodic assistance with light housework when having a flare up.

The reports from the doctor indicate that the Appellant can manage a number of physical activities independently, but does have some restrictions to her physical functioning. The doctor qualified some of them by referring to when the Appellant has flare ups of pain. The doctor did not clarify how often the Appellant has pain flare ups, how severe they are or how long they last for. Therefore, when the whole of the evidence is considered, the Panel finds that the Ministry reasonably determined that there was not enough information to establish a severe physical impairment.

#### **Severe Mental Impairment**

The Appellant submitted that she cannot mentally function in the work world to support herself. She has difficulty thinking clearly. Also, she is worried and stressed because she cannot afford healthy food and has no sense of living security.

The Ministry was not satisfied that the information submitted established a severe mental impairment.

*The Panel's Findings*

The Appellant described how she has difficulty thinking clearly and how her circumstances are causing her to be stressed and worried. The doctor diagnosed no mental health conditions, but did report cognitive and emotional functioning deficits in the areas of memory and emotional disturbance. That, however, is all that the doctor reported, providing no details about how these deficits might impact the Appellant's daily functioning, including no information about difficulties with activities requiring cognitive abilities (such as managing medications) and no information about any social functioning difficulties. Therefore, the Panel finds that the Ministry reasonably concluded that the information did not establish a severe mental impairment.

**Restrictions to Daily Living Activities**

The Appellant's position is that because of how her multiple health conditions affect her ability to functioning every day she needs help with many daily living activities.

The Ministry wrote that it relies on the medical opinion from and the expertise of the Appellant's doctor. Based on the reports from that doctor, the Ministry was not satisfied that the information demonstrated that the Appellant's impairments significantly restrict her 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. The Appellant's doctor is the prescribed professional.

The doctor wrote that the Appellant has difficulty performing daily living activities due to constant pain, chronic fatigue, poor quality of life due to constant tiredness and low muscle strength. However, the doctor also reported that the Appellant independently manages walking indoors, standing, laundry, all aspects of personal care, meals, paying rent/bills, medications and some aspects of shopping and transportation. For those activities for which the Appellant needs periodic assistance, such as walking outdoors, basic housekeeping and carrying heavy weights, the doctor has indicated friends help or the Appellant needs help when there are flare ups. The doctor provided no details about how often help is needed or for how long, or the duration or extent of the flare ups. Therefore, the Panel finds that the Ministry reasonably determined that information from the doctor did not demonstrate that a severe physical or mental impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods.

**Help with Daily Living Activities**

The Appellant's position is that because of her conditions she relies on friends to help her when she walks, lifts things and does housework. Also, the doctor indicated that she needs a cane.

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. The Ministry did note the doctor's reference to the Appellant's need for a cane.

*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. In this case, the doctor reported that the Appellant needs a cane for ambulation, but for when she is having flare ups of her condition. The doctor also indicated that the Appellant needs periodic assistance with some daily living activities, but again at times qualified that opinion to when the Appellant has flare ups. The doctor provided no information about the frequency, duration or severity of such flare ups or the duration or extent of help the Appellant needs. Therefore, based on the information from the doctor, 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.