

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) October 6, 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. Specifically, 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 medical practitioner is likely to continue for at least 2 years

The Ministry was satisfied that the Appellant satisfied all of the other criteria for PWD designation; that is, she

- has reached 18 years of age;
- has a severe physical impairment that 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,
- in the opinion of a prescribed professional, as a result of those restrictions she requires help to perform those activities.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) Section 2(2).

## PART E – Summary of Facts

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

1. Appellant's PWD application consisting of her self-report dated June 2, 2014 and a physician's report and an assessor's report. Both reports were completed on August 12, 2014 by a doctor who indicated that the Appellant has been his patient for 3 years and he has seen her between 2-10 times in the past 12 months.
2. Appellant's request for reconsideration with a written statement.

The Panel finds, based on the reconsideration decision, that the only issue in this appeal is whether the Ministry reasonably determined that a medical practitioner did not confirm that the Appellant's severe physical impairment is likely to continue for at least 2 years as required by section 2(2)(a) of the EAPWDA. Therefore, the Panel has summarized the evidence related to that issue only.

### *Diagnoses and Duration of Medical Conditions*

The doctor, who completed the physician's report and the assessor's report, diagnosed the Appellant with cervical cancer onset May 2014 and with a Lisfranc fracture of the right foot onset June 6, 2014. In the physician's report, he checked the box for "no" in response to the question whether the Appellant's impairments are likely to continue for two or more years from the date of the report. He also added: "3-6 months for Lisfranc fracture" and "6-12 months for cervical cancer. As for any medications and/or treatments that may interfere with the Appellant's ability to perform daily living activities, the doctor wrote "chemo & radiation" and duration "6-12 months". He provided no diagnoses of any mental health condition or significant deficits in cognitive or emotional functioning.

For the appeal hearing, the Appellant submitted a letter, dated October 29, 2014, from the radiation oncologist who is treating her at a cancer centre. The oncologist wrote that the Appellant has been a patient at the clinic since May 9, 2014 and that the Appellant will continue to be assessed through follow up appointments at the cancer centre. Her progress will be reassessed at each of her follow up appointments in the future. At this time it is not possible to determine the number of follow up appointments the Appellant will need to attend in the future. The Ministry did not object to the admissibility of this letter.

At the hearing, the Appellant described her health conditions as she did in her PWD application and her request for reconsideration. She repeated her arguments from her request for reconsideration. She said that her family doctor is not treating her for cancer and he has limited knowledge about her treatments or how long they will last. The Appellant said that with cancer no one can say how long the treatments will be needed, how long the conditions will last or in fact how long she has to live.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the October 2, 2014 oncologist's letter and the Appellant's testimony at the hearing because they provide additional information about the Appellant's conditions and are in support of the evidence the Ministry had at reconsideration

The Appellant's advocate submitted oral arguments on the Appellant's behalf. These are summarized in Part F Reasons of this decision.

At the hearing, the Ministry relied on and reaffirmed the reconsideration decision

## 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 medical practitioner is likely to continue for at least 2 years.

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.*

The only issue in this appeal is whether a medical practitioner confirmed that the Appellant's severe physical impairment is likely to continue for at least two years.

The Appellant's advocate submitted that the oncologist's letter provides sufficient confirmation that the Appellant's health conditions and treatments will continue indefinitely. The oncologist could not be more specific because the Appellant's treatment requirements are assessed appointment by appointment. Also, the Appellant submitted that with cancer it is difficult to predict how long treatments will be needed or how long the conditions will last. The Appellant's position, therefore, is that she has met all the requirements for PWD designation.

The Ministry's position is that the family doctor did not confirm that the Appellant's severe physical impairments are likely to continue for at least 2 years or more. Also, the oncologist did not provide an opinion about the duration of the Appellant's conditions.

The Panel notes that section 2(2)(a) of the EAPWDA expressly states that a medical practitioner must give an opinion that a severe impairment is likely to continue for at least 2 years. The Appellant's doctor of 3 years answered no to the question whether her impairments are likely to continue for two or more years. Additionally, he wrote "3-6 months for Lisfranc fracture" and "6-12 months for cervical cancer". He also noted that the anticipated duration for her medications and treatments would be 6-12 months. In the October 29, 2014 letter, the oncologist did not address the duration of the Appellant's cancer condition or the duration of her treatments, and did not state that the condition or treatments would continue indefinitely. In fact, the oncologist refers only to the reassessment of the Appellant's progress at each follow up appointment. The oncologist also stated that it is not possible to determine the number of follow up appointments the Appellant will need.

Based on the evidence from the doctor and the oncologist, the Panel finds that the Ministry reasonably determined that a medical practitioner did not confirm that the Appellant's severe physical impairment is likely to continue for 2 years or more. Therefore, the Panel confirms the Ministry's reconsideration decision, determining that the Appellant is not eligible for PWD designation, because it is reasonably supported by the evidence.