

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) December 22, 2014 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the requirements for designation as a person with disabilities (PWD) under Section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The Ministry found that the Appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence established that:

- the Appellant has a severe physical or mental impairment;
- in the opinion of a prescribed professional, the Appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods by a severe impairment; and,
- in the opinion of a prescribed professional, as a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform daily living activities.

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

The Appellant did not appear at the hearing. The Panel confirmed that notice of the hearing was provided to the Appellant and then proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

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

1. Appellant's PWD application consisting of:

- The Appellant's self-report dated June 17, 2014.
- A physician's report and an assessor's report both completed on July 3, 2014 by the same doctor (hereafter "Dr. C") who indicated that the Appellant has been her patient since July 20, 2009 and that he had seen the Appellant 11 or more times in the past 12 months.

2. The Appellant's request for reconsideration together with a written submission from her advocate and a checklist prepared by the advocate, completed and signed by Dr. C on December 9, 2014.

3. A written request from the Ministry to Dr. C, dated December 17, 2014, requesting further clarification regarding the information in the December 9, 2014 checklist. There was no response from the doctor.

For this appeal the Appellant submitted the following:

- A statement in her notice of appeal that she has supporting documents proving she has been referred to a psychiatrist dating back to 2011, who diagnosed her and prescribed medications.
- An email note from the Appellant stating that she saw a psychiatrist and a psychologist.
- Letters dated February 28, 2011, March 15, 2011 and March 24, 2011 from a psychiatrist (hereafter "Dr. G") regarding the Appellant's health conditions.
- Letters dated February 2, 2011 and May 5, 2011 from an insurance company regarding short term disability benefits that the Appellant was eligible for.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits as evidence the information in the documents submitted by the Appellant for this appeal because that information is consistent with and supports the evidence the Ministry had at reconsideration.

The Panel has summarized the relevant evidence as follows.

Diagnoses

In the physician's report, Dr. C diagnosed the Appellant with anxiety (onset 2011), depression (onset 2011), insomnia (onset 2011), fatigue onset (2011) and scoliosis/back pain (onset 1998). Dr. C checked off the following conditions in the December 9, 2014 checklist: anxiety, scoliosis, insomnia and depression. Dr. G wrote that the Appellant was suffering from major depression with anxiety features, and had a past history of asthma.

Mental Impairment

The Appellant described her disability as follows:

- Has anxiety and depression which impact her life several ways; has to take multiple different medications daily which make her tired, fatigued and nauseous.
- Consistently has problems sleeping at night and takes medications to help with sleeping.
- Many days gets up not wanting to face the day; would rather stay in bed all day long and

wishes she could sleep for days.

- Sometimes goes to bed early because she is so miserable and hopes she will wake up feeling better; has no energy, is anxious and impatient.
- Doesn't socialize as much anymore or leave her house; has no desire to be with friends or family; has lost relationships and has lost interest in living.
- Normally enjoyed cooking, reading, swimming; chooses to just pick up food or eat simple meals like cereal over preparing something.
- Doesn't shower as much because she is fatigued; doesn't wear makeup or dress nicely because of the way she feels; just doesn't care anymore.
- Worries about paying off debt from when she first stopped working and received disability insurance; can't take the stress of her financial situation; lives alone and has reduced her costs, for example by selling her car; works 16 hours a week and feels she can handle that.
- Thinks of death a lot; thinks it would be better than living a life she hates so much; feels as if she is at her wits end and feels close to giving up; has been under so much stress she becomes physically ill.
- Sees her doctor constantly about getting refills for medications or getting off them.
- Nothing in her life makes her happy anymore, except having her dog.

In the physician's and assessor's reports, Dr. C described the Appellant's mental impairments and functioning as follows:

- Had difficult home life and difficult family relationships.
- Severe depression/anxiety and significant emotional impairment affect her daily life and job; she feels tired all the time and has suicidal thoughts; has frequent flare ups of depression and anxiety.
- Has significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration – severe depression/anxiety.
- Has the following degrees of impact to cognitive and emotional functioning: major impact to emotion and attention/concentration; moderate impact to bodily functions, executive, memory and motivation; minimal impact to consciousness and impulse control; and no impact to insight and judgment, to motor activity, to language, to psychotic symptoms, to other neuropsychological problems, or to other emotional or mental problems.
- Is unable to concentrate, memory is affected, is unable to work full time; learning new information is difficult.
- Has no difficulties with communication; i.e., good speaking, reading, writing, hearing abilities.

After the statement "experiences the following symptoms daily as a result of her mental health conditions which further restrict her ability to complete [his] daily living activities", the following items were checked off in the December 2014 checklist:

- Sleep disturbance; maximum sleep of 3 hours per night.
- Depression, poor concentration, planning and paying attention; poor short term memory.
- Lack of motivation; hostility and anger; difficulty interacting with others.
- Overwhelmed with unexpected demands; majorly withdrawn from others.

In the March 15, 2011 letter, Dr. G described the Appellant's impairments as follows:

- Started feeling depressed around March 2010; stressors from work and dealing with her

mother; had to do shift work; lived with various people.

- Gained weight; had difficulty falling asleep, waking after a few hours; significant decline in energy and motivation; concentration also decreased.
- Became withdrawn; had to push herself to do things; had panic attacks; marked self-doubts.
- Marked decline in interests; had suicidal and self-harm thoughts; no history of suicide attempt.
- Feeling restless and agitated before going to work; started crying for no reason, had palpitations, sweating, shaking and fainting sensations lasting for about 10 minutes.
- Had been on medications after a hospital assessment in December 2010 with some improvement; no history of alcohol or illicit drug abuse.
- Mental state examination: was articulate; mood subjectively and objectively was dysphoric, and affect was mood congruent and reactive to conversation tones; had range of affect; denied any suicidal thoughts, intent or plan; had no disorder of thought form or perceptual disturbances; cognitive functions were grossly intact; insight and judgment was good.
- Medications were reviewed, with one added and another with dosage decreased; would benefit from supportive therapy.

In the February 28, 2011 and March 24, 2011 letters, Dr. G wrote that the Appellant was suffering from major depression and had been advised to stay off work until her condition was stable. Dr. G was not able to provide a time frame for the Appellant's return to work.

Physical Impairment

Dr. C provided the following information in the physician's and assessor's reports regarding the Appellant's physical functioning:

- Can walk unaided 4+ blocks on a flat surface, can climb 5+ steps unaided, can lift 5-15 lbs. "due to scoliosis/back pain"; has no limitations with remaining seated.
- Independently manages all areas of mobility and physical ability; that is, walking indoors and outdoors, climbing stairs and standing, lifting, and carrying and holding.
- When experiencing back pain, affects lifting and carrying.

In the December 2014 checklist, the following were checked off:

- Basic mobility - significantly restricted from walking more than 2 blocks due to severe back pain; climbing stairs- directly restricted from climbing more than 5-10 stairs due to severe back pain and fatigue; standing- significantly restricted from standing longer than 5 minutes due to severe back pain.
- Lifting/carrying/holding - significantly restricted from lifting, carrying or holding more than 5 lbs. due to severe back pain and fatigue.
- Sitting - directly restricted from sitting longer than 10-15 min. due to severe back pain.

Daily Living Activities

In the physician's and assessor's report, Dr. C reported that the Appellant:

- Has been prescribed medications and/or treatments that interfere with her ability to perform daily living activities and listed the medications; has a significant emotional impairment affecting daily life.
- Independently manages all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.
- Has difficulty with lifting and carrying with back pain flare-ups; mother helps sometimes when

Appellant needs it.

- With flare ups of depression/anxiety, postpones doing necessary tasks.
- Needs periodic support/supervision with all areas of social functioning with anxiety/depression flare ups; that is, with making appropriate social decisions, with developing and maintaining relationships, with interacting appropriately with others, with dealing appropriately with unexpected demands, and with securing assistance from others.
- Has marginal functioning with her immediate social network with flare ups of depression and anxiety; has marginal functioning with her extended social networks with flare ups of depression, anxiety and experiences social isolation.

The following daily living activities were checked off in the December 2014 report:

- Dressing: significant restrictions with dressing herself; takes 2x longer due to chronic back pain as well as depression; grooming - direct restrictions with brushing teeth and hair 4-6 days a week due to pain and depression; bathing - direct restrictions with standing in shower longer than 10 minutes due to severe back pain – has to hold on to walls, neglects 2-3 times due to depression; feeding self - significant restrictions with eating due to pain and depression, eats one small meal 2-3 times per week.
- Transfers in/out of bed - direct restrictions with getting out of bed mornings due to lack of motivation and chronic pain, stays in bed 2-3 times per week due to depression, takes 2x longer to get out of bed; transfers on/off chair - significant restrictions with getting off chair due to severe back pain, has to hold on to chair arms.
- Laundry/housekeeping - direct restrictions with carrying more than 5 lbs. of laundry & with all basic housekeeping duties due to chronic pain, neglects 4-6 days a week due to pain & depression.
- Going to /from stores - significant restrictions due to depression & pain; paying for purchases - directly restricted from standing in line longer than 10 minutes due to chronic back pain & fatigue; carrying purchases home - significantly restricted from lifting/carrying/holding more than 5 lbs. due to chronic back pain & fatigue.
- Meal planning: direct restrictions on a weekly basis due to lack of motivation, depression & chronic pain; food preparation/cooking - direct restrictions with standing longer than 10 minutes due to chronic pain as well as depression, fatigue & lack of motivation.
- Banking - direct restrictions with banking, unable to stand in line more than 10 minutes as well as being in crowd due to anxiety; filling prescriptions - direct restrictions due to depression & lack of motivation as well as anxiety.
- Getting in/out of vehicle - direct restrictions due to chronic pain, takes 2x longer; using public transit - significant restrictions due to chronic pain as well as anxiety and depression.

In that same report, the following were checked off regarding activities requiring assistance:

- Basic mobility: continuous assistance with walking more than 1 block; has a cane.
- Climbing stairs: continuous assistance from railing or elevator if available.
- Lifting/carrying/holding: continuous assistance with more than 5 lbs.
- Dressing: must sit down to put on pants/shoes/socks, difficulty lifting arms to get dressed.
- Bathing: continuous assistance by holding on to walls when showering.
- Transfers in/out of bed: must roll and shuffle out of bed, uses side of bed for support.
- Transfers on/off chair: must hold on to chair arms to get up.
- Laundry/housekeeping: requires continuous assistance with carrying more than 5 lbs. of laundry & all basic housekeeping duties.

- Going to/from stores: requires assistance with standing in line due to pain, anxiety – dad helps.
- Paying for purchases: continuous assistance [from wife] with standing in line longer than 10 minutes.
- Carrying purchases home: requires continuous assistance with more than 5 lbs. Dad helps.
- Meal planning: requires continuous assistance with all planning and prep.
- Food preparation/cooking: requires continuous assistance. Mom helps.
- Banking: requires continuous assistance due to pain and depression.
- Filling prescriptions: requires continuous assistance due to pain & lack of motivation.
- Getting in/out of vehicle: must pull on car door for support getting in/out.
- Using public transit: unable to use due to anxiety, has a car.

Help with Daily Living Activities

Dr. C reported:

- In the physician's report, that the Appellant does not require any prostheses or aids for her impairment; that her mother helps sometimes.
- In the assessor's report, that the Appellant needs help/support from her step-dad and friends to maintain her in the community; her friends provide help with daily living activities; does not have an assistance animal.

In the December 2014 checklist, all activities, as noted above, were checked as requiring assistance. Also, in that checklist, there is a note that the Appellant has a cane, but the Appellant did not report that nor did Dr. C. in her physician's and assessor's reports refer to any assistive aids.

At the hearing, the Ministry reviewed and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, concluding that the Appellant was not eligible for PWD designation because she did not meet all the requirements in section 2(2) of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the Appellant's circumstances.

Applicable Legislation

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

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 Mental Impairment

The Appellant's position is that the information from her doctors confirm that she has severe medical conditions which significantly restrict her ability to function. Both doctors diagnosed her with depression and also prescribed medications for her conditions. The Appellant submitted that those medications make her tired, fatigued and nauseous. Also, her mental impairments affect her ability to sleep, to take care of daily tasks, to socialize and often to just face the day.

In its reconsideration decision, the Ministry stated that it reviewed the Appellant's information and the reports from Dr. C which were provided with the PWD application. The Ministry wrote that it also reviewed the checklist prepared by the Appellant's advocate and completed by Dr. C. The Ministry noted that there was a significant change in the assessment of the Appellant's functioning abilities in that checklist report from the original assessment 5 months earlier. The Ministry wrote to Dr. C asking

questions to clarify these changes. Dr. C did not respond and therefore the Ministry stated that it was not able to understand the drastic change in the doctor's opinion in 5 months. Based on the Appellant's application as a whole, the Ministry was not satisfied that the information provided established a severe mental impairment.

The Panel's Decision

The diagnosis of a serious medical condition or a medical professional's statement that a condition or an impairment is severe does not in itself establish a severe impairment for the purposes of satisfying the criteria for PWD designation. 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 and the Appellant's doctors.

The Appellant stated that because of her impairments she can only work part time. The Panel notes that, in contrast to the Canada Pension Plan disability legislation and the province's Person with Persistent Multiple Barriers legislation, the ability to work and/or find work is not a criteria for designation as a PWD in the EAPWD statute.

The Appellant described how anxiety and depression impact her life in various ways. She has to take multiple, different medications which make her fatigued and nauseous. She also has problems sleeping at night. The Appellant stated that there are many days when she does not want to get up to face the day. She has no energy, is anxious and impatient. The Appellant also stated that she doesn't socialize as much anymore or leave her house, and she has no desire to be with friends or family. She doesn't look after her appearance as much because of how she feels; she just doesn't care anymore.

Both Dr. C and Dr. G described the Appellant's depression and how it affected the Appellant's functioning. Dr. C, who has been the Appellant's doctor since 2009, also diagnosed the Appellant with anxiety, insomnia and fatigue. Dr. C's physician's and assessor's reports are more recent than Dr. G's 2011 assessments and therefore, the Panel gives the information in those July 2014 reports more weight. As for the December 2014 checklist, the Panel gives that report little weight because there is no explanation for the significant changes noted in the Appellant's functioning abilities between July 2014 and December 2014. There is also no explanation for the marked differences in the reports regarding the degree of assistance the Appellant needs for various activities. For example, Dr. C in her initial assessments indicated that the Appellant does not need any assistive devices, but in the December 2014 checklist there is a reference to the Appellant having a cane. The Appellant did not indicate that she has a cane or uses any assistive devices.

Dr. C wrote that severe depression/anxiety and significant emotional impairment affect the Appellant's daily life. She has frequent flare ups of depression and anxiety. Dr. C also reported that the Appellant has significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration, with major impacts to emotion and attention/concentration and moderate impacts to bodily functions, executive, memory and motivation. However, when assessing how these conditions affect the Appellant's ability to function and manage daily tasks, Dr. C reported that the Appellant independently manages all the daily living activities requiring cognitive abilities, such as managing finances, medications, meal preparation and shopping tasks. The doctor added only that with flare

ups of depression/anxiety, the Appellant postpones doing necessary daily activities.

Dr. C did indicate that the Appellant needs periodic supervision or support in aspects of social functioning, such as with developing and maintaining relationships and with dealing appropriately with unexpected demands. For the degree and duration of support/supervision needed, the doctor added - with anxiety/depression flare-ups. The doctor added the same comment regarding the Appellant's marginal functioning with her social networks. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe mental impairment.

Severe Physical Impairment

The Appellant's position is that scoliosis and severe back pain significantly impair her ability to function. Also, she is fatigued and has trouble sleeping from the medications she takes.

The Ministry wrote that the frequency, severity and specifics of the Appellant's back pain was not described. Also, Dr. C. reported that the Appellant does not need any assistive devices. Considering the information as a whole, the Ministry was not satisfied that the information provided established a severe physical impairment.

The Panel's Findings

The Appellant provided little information about the severity of her back pain or how the pain affects her ability to carry things, walk, take care of herself or do household tasks. Also, although Dr. C diagnosed the Appellant with scoliosis/back pain and fatigue, Dr. C reported that the Appellant independently manages walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. The doctor only commented that when the Appellant experiences back pain flare-ups, that affects lifting and carrying. In addition, Dr. C reported that the Appellant independently manages such physical tasks as dressing and bathing, getting in/out of bed and chairs, basic housekeeping and cooking. Therefore, when all the evidence is considered, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe physical impairment.

Restrictions to Daily Living Activities

The Appellant's position is that every daily living activity is directly and significantly restricted by her severe impairments.

The Ministry's position is that there was insufficient information to establish that the Appellant ability to perform daily living activities is significantly restricted.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion confirming that the Appellant's severe 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 also are listed in the physician's and assessor's reports. In this case, because Dr. C completed those reports and because the Panel has given little weight to the December 2014 checklist, the Panel will consider Dr. C's July 2014 assessments as the prescribed professional's opinion for this PWD criterion and the one that follows.

In the assessor's report, Dr. C noted that the Appellant independently manages all daily living activities, except for social functioning for which periodic supervision/support is needed when the Appellant has flare-ups of depression and anxiety. The doctor also commented that with these types of flare-ups the Appellant postpones doing necessary daily activities. As for any restrictions from back pain, Dr. C only noted that flare-ups cause difficulty with lifting and carrying. Therefore, based on Dr. C's July 2014 assessments, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant has a severe physical or mental impairment which 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 position is that she needs help with all of her daily living activities and she sometimes receives help from her mother, her step dad and friends.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that the Appellant requires significant help from other persons. Also, it noted that the information from the doctor did not establish that the Appellant requires any assistive devices, the significant help of another person or an assistance animal.

The Panel's Findings

Another legislated criterion for PWD designation, 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 needs help with those activities.

In her July 2014 reports, Dr. C indicated that the Appellant did not need any assistive devices or an assistance animal. The doctor noted only that the Appellant's mother helps sometimes when needed and the Appellant's step-dad and friends provide support with areas of social functioning. Based on the doctor's evidence and based on the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted, the Panel finds that the Ministry reasonably concluded that the requirements in section 2(2)(b)(ii) of the EAPWDA were not satisfied.

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.