

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated January 22, 2015 which held that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Person with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and her impairment is likely to continue for 2 years or more. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe mental or physical impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- 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 DLA.

## PART D – Relevant Legislation

EAPWDA *Employment and Assistance for Persons with Disabilities Act, section 2*  
EAPWDR *Employment and Assistance for Persons with Disabilities Regulation, section 2*

## PART E – Summary of Facts

The evidence before the minister at the time of the reconsideration decision included the following documents:

- Persons with Disabilities (PWD) Designation application including the applicant information section dated September 20, 2014, a physician report (PR) dated August 20, 2014 completed by a general practitioner who had known the appellant for more than 2 years, and an assessor report (AR) dated October 16, 2014 completed by an orthopedic surgeon who had known the appellant for more than 2 years;
- PWD Denial letter including Denial Decision Summary dated December 17, 2014;
- Request for Reconsideration dated January 19, 2015 attaching a letter from her general practitioner dated January 20, 2015.

### Diagnoses

In the PR, the appellant was diagnosed with chronic hepatitis, HCV, COPD/asthma, T2DM, neutropenia and osteoarthritis in both knees. In the AR, the assessor indicates that her impairments are advanced arthritis in both knees.

### Health History

The appellant's general practitioner indicates that the osteoarthritis prevents mobility and limits physical abilities, that she feels weak due to chronic hepatitis and COPD.

### Physical Impairment

In her self-assessment, the appellant wrote that:

- She has insomnia, lacks energy and feels weak and tired most of the time, has night sweats, often does not want to eat, has trouble getting the right amount of exercise to keep sugar levels in target and needs a cane to walk.

In the PR, the general practitioner reported that:

- The appellant can walk 4+ blocks unaided, climb 5+ stairs, lift between 15 to 35 pounds and remain seated 1 to 2 hours

In the AR, the assessor reported that:

- The appellant requires a cane when walking and railings with climbing stairs, periodic assistance with lifting and carrying/holding, that she is independent in standing.

### Mental Impairment

In her self-assessment, the appellant wrote that:

- She needs to be told things 3 or 4 times, her friends and family leave her notes; she is mentally worn down and unable to work full or part-time.
- She has trouble concentrating and her memory is very poor.

In the PR, the appellant's general practitioner reported that:

- There are no difficulties with communication.
- The appellant has a deficit with cognitive and emotional functioning in the area of emotional disturbance (depression).

In the AR, the assessor reported that:

- The appellant is satisfactory with speaking, reading, writing and hearing.
- There is a major impact with motivation, moderate impacts with memory and motor activity, minimal impact with executive and no impacts to the remainder of her cognitive and emotional functioning.

### Daily Living Activities (DLA)

In her self-assessment, the appellant wrote that:

- Her daily life is affected in all mental and physical areas and she needs help with most things of her daily living.

In the PR, the appellant's general practitioner reported that:

- The appellant has not been prescribed medications and/or treatments that interfere with her daily living

activities, nor does she require any prostheses or aids for her impairment.

- There is a continuous restriction on mobility outside the home due to osteoarthritis in knees.

In the AR, the assessor reported that:

- The appellant needs periodic assistance with laundry and basic housekeeping, going to and from stores, carrying purchases home, getting out of a vehicle.
- Periodic assistance is required and provided by the appellant's daughter to do meal planning, budgeting and paying rent and bills.
- The appellant uses the following assistive devices: a cane for walking and a raised toilet seat.
- No assistive animal is used or needed.

In her Request for Reconsideration, the appellant provided a letter dated January 20, 2015, in which her general practitioner reported that:

- The appellant has complex problems, most notably COPD and fairly advanced severe knee arthritis, neutropenia prevents her from being a candidate for knee replacement, and her knee arthritis is getting progressively worse.

In her Notice of Appeal dated January 30, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- she feels she is not being understood and is confused;
- there is more to her disability than is being told; and
- she would like a chance to tell her side about how she has been dealing with her pain and her inability to get into recovery due to her complex health problems.

At the hearing, the appellant provided additional documentary evidence that included a letter from her daughter dated February 2015 and a computer printout dated February 19, 2015 and marked Confidential: Do Not Distribute from a doctor who the appellant indicated was a friend and not her general practitioner. The ministry had no objection to the inclusion of these documents.

The panel determined the additional oral and documentary evidence was admissible under s.22(4) of the EAA as it was in support of the records before the minister at reconsideration. The panel determined that the documents did not provide any new evidence and were admissible as they were in support of the medical information in the PR and the reference to the appellant's daughter in the AR.

At the hearing, the appellant indicated that:

- her family of origin was abusive and she learned to hide her feelings;
- she had suffered from alcoholism and substance abuse;
- she suffers from depression most of the time;
- her immune system is low, her osteoarthritis is getting worse;
- she has never been a complainer, pushes through the pain and tends to minimize her symptoms;
- she requires knee replacement on both knees but is unable to have this procedure performed as she is at high risk for infection due to low blood counts;
- she has never collected welfare or EI as she has always worked as a care worker for 25+ years;
- she has to live on \$560.00 per month of which \$400 is for rent.

She indicated that she agreed with the assessments included in her application by medical practitioner and assessor. She uses her cane in winter and if she walks to the store. Without her daughter's help, she needs help to reach both high and low to clean/dust. The last time she went shopping alone was 6 months ago.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry indicated that more specific information was needed regarding what her daughter does and how exercise like walking impacts the appellant's condition.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant was not eligible for PWD designation, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that as a result of those restrictions, the appellant does not require the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

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.
- (4) The minister may rescind a designation under subsection (2).

### Employment and Assistance for Person with Disabilities Regulation (EAPWDR)

#### Definitions for Act

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) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

At reconsideration, based on the information submitted with the Request for Reconsideration and the original application, the ministry was not satisfied that the information provided was sufficient evidence of a severe physical or mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform the daily living activities set out in legislation.

### **Severe Physical Impairment**

The appellant's position is that she has a severe physical impairment that impacts her daily life, requiring assistance from her daughter for cleaning and shopping.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe physical impairment as required by Section 2 EAPWDA. The ministry argued that the PR indicates that she is continuously restricted with mobility outside the home, but no other DLA are restricted.

The AR indicates that the appellant's physical impairment is due to advanced arthritis in both knees, that she uses an assistive device for walking indoors and outdoors and needs periodic assistance with lifting and carrying/holding. There is no information provided on the frequency or extent of this assistance to determine whether it meets the legislative requirement of 'significant help or supervision'.

The panel finds the ministry's determination that the appellant does not have a severe physical impairment was reasonably supported by the evidence most notably that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs, lift between 15 to 35 pounds and remain seated 1 to 2 hours.

### **Severe Mental Impairment**

The appellant's position is that a severe mental impairment is established by the evidence of the PR that she suffers from depression.

The ministry's position is that there is not sufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2 EAPWDA. The ministry argues that the PR indicates only one area where there is a significant deficit with cognitive and emotional functions. No deficit is identified for the other areas.

The AR indicates that the appellant's mental impairment has moderate impact on one area of cognitive and emotional functioning, motor activity, and all other areas had no impact.

The panel finds that since the appellant's impairment moderately impacts only one area and has no impact on the other areas of cognitive and emotional functioning, the ministry's determination that the information provided does not establish that the appellant has a severe mental impairment was reasonably supported by the evidence.

#### **Restrictions in the ability to perform DLA**

The appellant's position is that her severe physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the assistance of another person, namely her daughter, and the use of a cane as an assistive device.

The ministry's position is that there is not sufficient evidence to establish that, in the opinion of a prescribed professional, the appellant's DLA are directly and significantly restricted either continuously or periodically for extended periods as required by Section 2 EAPWDA.

The ministry argues that although the AR indicated that the appellant needs periodic assistance from another person with the tasks of basic housekeeping, going to and from stores, carrying purchases home, meal planning (diabetes), budgeting, paying rent/bills, getting out of vehicles, the appellant is independent in the remaining DLA. Further, it has been established in the PR that she is able to walk 4+ blocks unaided, climb 5+ stairs, lift between 15 to 35 pounds and remain seated 1 to 2 hours. The panel finds that there is no information on how often she requires assistance, the extent of the assistance, or any indication that it takes her significantly longer to perform any of the DLA. Further, the PR states that she has not been prescribed medications and/or treatments that interfere with her DLA.

The panel finds the ministry's determination that there is not enough evidence from the prescribed professional(s) to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, was a reasonable application of the applicable enactment in the circumstances of the appellant.

#### **Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person and the use of assistive devices to perform DLA. Some of this periodic assistance is currently provided by her daughter with household cleaning and shopping.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The panel finds the ministry's determination that there is insufficient evidence to establish that the appellant requires help in relation to DLA that are directly and significantly restricted was reasonably supported by the evidence.

#### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's decision which determined that the appellant was not eligible for PWD designation was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.