

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) February 16, 2015 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 establishes 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

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

1. Appellant's PWD application consisting of:

- The Appellant's self-report dated September 18, 2014.
- A physician's report completed on September 18, 2014 by a doctor who indicated that he had seen the Appellant 11 or more times in the past 12 months. The doctor did not indicate how long the Appellant had been his patient nor what he relied on for this report.
- An assessor's report completed on October 10, 2014 by a registered psychiatric nurse who indicated that she had only one appointment with the Appellant. The nurse also indicated that the Appellant's daughter and sister-in-law were at the appointment for this assessment.

2. Appellant's request for reconsideration dated January 15, 2015 with her statement.

In her notice of appeal, the Appellant wrote that she needs a lot of help. She cannot cook or clean. Also, she just injured her right hand. During the hearing, the Appellant said that her arthritis is really bad and she is constantly in pain. The Appellant said that the pain and everything is getting worse.

It is very hard for her to get out and about or to do anything. She also has fibromyalgia. The Appellant also said that she cannot cook and cannot lift anything. She also cannot fix her bed or do any cleaning. The Appellant said that if she starts to sweep her back will start to hurt. With the arthritis in her back, it really hurts to walk and she cannot go for one block. The Appellant said that her feet also start to hurt after one block.

The Appellant said that her daughter does all the cooking, helps her shower and dress, does the cleaning, and generally does everything. The Appellant said she really can't do anything anymore because her condition is getting worse. She takes 6 medications in the morning and 4 at night, including anti-depressants. The medications are for her various conditions. She takes 8-10 pain medications a day. At the hearing, the Appellant's daughter confirmed that she helps with almost everything. She does all meals, all housework, helps her mother with bathing and grooming, and generally with getting around.

When the Panel asked about the splint that the nurse noticed, the Appellant stated that her doctor prescribed it for her because of the bad arthritis in her hand. The Appellant said she had been seeing the doctor for many years. She also said that when he filled out the reports for this application, he only asked a few questions. He did ask her whether she uses a cane and she told him that she does around the house.

Pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits the testimony from the Appellant and her daughter as being consistent with and tending to corroborate the evidence the Ministry had at reconsideration. The Panel has summarized the relevant evidence from the Ministry's record under the PWD criteria at issue below.

At the hearing, the Ministry reviewed and reaffirmed the reconsideration decision.

Diagnoses

The doctor diagnosed the Appellant with rheumatoid arthritis, fibromyalgia and depression.

Physical Impairment

The Appellant described her disability as follows:

- Has a hard time getting mobile when she gets up; takes about 3-4 hours.
- Wrist hurts a lot; can't lift anything – only 5 lbs. or less.
- Has arthritis in her hands, wrists, back and feet; also has fibromyalgia.
- Has a hard time writing, hands clamp up; can't cook and lift pots off the stove; daughter does all the cooking and chores.
- Has a hard time fixing the bed or sweeping, so can't do much housework.
- Has been suffering so much with arthritis; has a hard time doing much.
- Walked 2 blocks to the bus stop to catch the bus to town – which is 5 blocks from her home; now can't walk far anymore, less than 1 block, because of the pain and also the bottom of her feet hurt so much.

The doctor provided the following information about the Appellant's physical conditions and functioning:

- Chronic arthritis and fibromyalgia are unresponsive to multiple treatments; pain is greatest in her back, hands and knees; needs help.
- Can walk 2-4 blocks unaided on a flat surface; can climb 5+steps – needs rails; can lift under 5 lbs.; can remain seated for less than 1 hour.
- Continuous restrictions to basic housekeeping and mobility outside the home.
- Warrants support; significant chronic arthritis.

The nurse provided the following information and observations about the Appellant's impairment:

- Writing is very difficult and painful; some hearing loss in both ears, has tinnitus.
- Wears a splint on her left hand for rheumatoid and osteoarthritis; needs right hand splint.
- Walking indoors takes significantly longer – has to hang on to something.
- Walking outdoors takes significantly longer and needs continuous assistance – 2 blocks max.
- Climbing stairs takes significantly longer and needs periodic assistance – needs railing.
- Standing is very painful and needs periodic assistance.
- Lifting, and carrying and holding needs continuous assistance – 5 lbs. maximum.
- When walking, back gets painful, feet cramp up and she has collapsed many times.
- Right knee "gives away"; pain in knees and hips.
- Sees a specialist for aggressive arthritis.
- "Obviously suffering from severe pain – continuously shifting her position."

Mental Impairment

The Appellant described her disability as follows:

- Has bad depression; cries a lot.

The doctor provided the following information about the Appellant's mental health conditions and functioning:

- Depression is secondary to chronic pain, monitored with antidepressant medications.
- Has a significant deficit in cognitive and emotional functioning in the area of emotional disturbance.

The nurse provided the following information about impacts to the Appellant's cognitive and emotional functioning:

- Major impact to bodily functions, emotion, insight and judgment, attention/concentration, motor

activities, and other neuropsychological problems.

- Minimal impact to motivation; no impact to consciousness, impulse controls, executive, language and psychotic symptoms.
- Sleep very disrupted from pain and depression; had several deaths and illnesses in the family in a short period and has worn herself out because of this.
- Suffers from depression and anxiety; taking prescribed medications.

Daily Living Activities

The doctor reported that the Appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities. The doctor reported the following restrictions to daily living activities:

- Continuous restrictions to meal preparation, to basic housekeeping and to daily shopping; continuous restrictions also to mobility outside the home; moderate to severe; needs help with cooking, cleaning, shopping; daughter looks after her.
- Warrants support – significant chronic arthritis.

The nurse provided the following information about the Appellant's ability to manage daily living activities:

- Personal care: takes significantly longer dressing, grooming, bathing – showers only; independently manages toileting; needs continuous assistance with feeding self/regulating diet – “daughter does it”; needs continuous assistance with transfers in/out of bed – “requires help”; takes significantly longer with transfers in/out of chairs.
- Can't get mobile or dressed in the morning until her medications kick in; brushing her hair is very difficult for her.
- Basic housekeeping and laundry: needs continuous assistance – daughter does both.
- Shopping: going to/from stores – needs continuous assistance and takes significantly longer – needs a “scooter”; reading prices/labels and paying for purchases – manages independently; making appropriate choices – needs continuous assistance – daughter does it; carrying purchases home – needs continuous assistance – daughter does it.
- Meals: needs continuous assistance with meal planning, food preparation, cooking and safe storage of food – daughter does these; burned herself badly once trying to lift a hot pot from the stove – was bandaged for 3 months.
- Managing finances: banking – needs continuous assistance – requires a reader; budgeting and paying rent/bills – needs periodic assistance and take significantly longer – needs family help.
- Medications: filling/refilling prescriptions, taking as directed, safe handling and storage – needs continuous assistance – can't pay.
- Transportation – getting in and out of a vehicle – needs continuous assistance and takes significantly longer; transit – not applicable.
- Takes several prescribed medications daily, including pain killers.
- Social functioning – needs continuous support/supervision in all areas; for appropriate social decision – overextends herself for family, especially sick ones; for ability to develop and maintain relationships – limited to 2 family members; for interacting appropriately with others and ability to deal appropriately with unexpected demands– appears to suffer from continuous severe pain; for ability to secure assistance from others – needs daily support and needs considerable personal care.

- Immediate social functioning – very disrupted functioning – constant pain, plus chronic anxiety makes her stick to her room.
- Extended social functioning – chronic constant pain plus anxiety and depression = isolating.

Help with Daily Living Activities

The doctor indicated that the Appellant:

- Does not require any prosthesis or aids, but warrants support; needs help.
- The Appellant's daughter lives with her and looks after her.

The doctor did not mention the cane that the Appellant uses, nor the splint that he prescribed for her.

The nurse provided the following information about the help the Appellant receives and needs:

- Wears a splint on her left hand and needs one for her right hand.
- Needs a walker and railings on the bathtub; needs a scooter.
- Her daughter does or helps with several daily living tasks.
- Needs continuous support/supervision with all areas of social functioning.
- Needs living suite with no steps.

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.

Physical Impairment

The Appellant's position is that she has a severe physical impairment from chronic arthritis and fibromyalgia. The chronic, severe pain and restrictions from these conditions makes it almost impossible for her to do anything. She cannot walk more than 1 block, she cannot lift anything, she cannot cook, she cannot shop, she cannot take care of housework and she cannot bathe or groom herself. Her daughter takes care of almost everything. The Appellant also submitted that her condition is getting worse.

In its reconsideration decision, the Ministry did not indicate whether it considered the information from the Appellant. It wrote that it relied heavily on the report from the doctor rather than the one from the nurse because the doctor had seen the Appellant 11 or more times in the year preceding his report whereas the nurse had one appointment with the Appellant. The Ministry was not satisfied that a

severe physical impairment was established.

The Panel's Findings

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 meet the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment directly restricts daily functioning and the ability to manage the daily living activities defined in section 2(2)(b) of the EAPWDR. Such evidence includes information from the Appellant as well as from medical or prescribed professionals.

In this case, the Panel notes there are reports from the Appellant up to and including her evidence at the hearing, from the doctor who completed the physician's report in September 2014 and from the registered nurse who completed the assessor's report in October 2014. The Appellant described in detail how the chronic pain from the chronic arthritis and fibromyalgia makes it very difficult for her to do anything physical or mobile, restricting almost everything she does. The Appellant stated that the pain and limitations to her mobility are getting worse. The Appellant described how the severe pain, even with medications, impacts her so that she cannot walk more than a block, she cannot lift anything, she cannot sweep, she cannot bathe or groom without help and it takes about 3-4 hours to get mobile when she gets up. She relies on her daughter for help with almost everything.

The doctor provided a diagnosis of rheumatoid arthritis and fibromyalgia. He noted that the Appellant has chronic pain which is unresponsive to multiple treatments. In September 2014, the doctor reported that the Appellant could walk 2-4 blocks unaided, could climb 5+ steps needing rails, could lift under 5 lbs. and could remain seated for less than 1 hour. The doctor also indicated that the Appellant's impairments directly restricted her ability to perform daily living activities, specifically meal preparation continuously, basic housework continuously, daily shopping continuously and mobility outside the home. The doctor, however, provided little in the way of narrative about the Appellant's circumstances, except that her restrictions are moderate to severe, she needs help with cooking, cleaning and shopping, and warrants support.

During the hearing, the Appellant said that she told the doctor she was using a cane around the house and the doctor prescribed the splint for her. The Panel accepts this evidence from the Appellant and notes that the doctor failed to mention either, and in fact he indicated that she does not need any prosthesis or aids. He also did not indicate what he relied on when completing this report.

The nurse provided many details about the Appellant's circumstances in the assessor's report. Also, although the nurse had one appointment with the Appellant, she did observe some of the Appellant's restrictions. The nurse noticed the splint on the Appellant's left hand and noted that one was needed for the other hand. The nurse also observed that the Appellant was "obviously suffering from severe pain – continually shifting her position". The Panel, therefore, gives the nurse's assessment some weight. The Panel also notes that the physical restrictions reported by the nurse are generally consistent with those reported by the doctor, except that the nurse provided more narrative.

The nurse reported that the Appellant needs continuous assistance walking indoors and outdoors, and with lifting and carrying and holding. The Appellant has to hang on to something when walking and she experiences pain when moving. She also has collapsed many times. The Appellant needs

continuous assistance with all areas of basic housekeeping, physical aspects of shopping and all areas of meal preparation. In addition, the nurse reported that the Appellant needs continuous assistance with transfers in/out of bed and getting in/out of vehicle. Other tasks requiring physical ability, such as transferring in/out of a chair and dressing take significantly longer. The nurse also added descriptions about the Appellant's circumstances, such as chronic constant pain and needs considerable personal care.

Therefore, when all of the information from the Appellant, especially her most recent descriptions of her impairments, and from the doctor's and the nurse's reports is considered, the Panel finds that it was not reasonable for the Ministry to conclude that all of the information did not establish a severe physical impairment.

Mental Impairment

The Appellant submitted that she has bad depression for which she takes medications. Depression and chronic anxiety continuously restrict her social functioning and impact her ability to sleep. Also, she has significant impacts to her cognitive and emotional functioning.

The Ministry's submitted that it was not satisfied that the information provided established a severe mental impairment.

The Panel's Findings

The Appellant, in her self-reports, provided little information about her mental impairments, except that she described her depression as bad and she has trouble sleeping. For this impairment, the Panel notes that the assessor's report differs in many aspects from the doctor's report. For example, in the assessor's report, the nurse reported 6 major impacts to cognitive and emotional functioning and the need for continuous support/supervision in all areas of social functioning. The nurse did add that constant pain, plus chronic anxiety and depression result in the Appellant's isolation.

The Appellant's doctor diagnosed her with depression. However, the doctor also wrote that the depression was secondary to chronic pain and is monitored with antidepressant medications. He also did not report any restrictions in the Appellant's ability to manage activities requiring cognitive and emotional abilities, such as managing medications, or any impacts on social functioning. As for deficits to cognitive and emotional functioning, the doctor reported only significant deficits in the area of emotion. Therefore, because the information about the Appellant's mental impairments differs between the two medical reports and because the Appellant herself provided little information about how depression impacts her functioning, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that her severe impairments directly and significantly restrict her ability to do almost everything, and her condition is getting worse. She relies on her daughter to look after her.

In its reconsideration decision, the Ministry relied only on the doctor's report. The Ministry stated that based on the little information provided by the doctor, it was not satisfied that the Appellant's impairments directly and significantly restrict her daily living activities, continuously or periodically for extended periods.

The Panel's Findings

To satisfy the requirements in section 2(2) of the EAPWDA, the Appellant must provide a prescribed professional's opinion confirming that her severe physical or mental impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. It is not enough, however, for the prescribed professional to merely report that activities are restricted. That professional must assess the degree of restriction and the extent to which assistance is needed to manage the daily living activities defined in section 2(1) of the EAPWDR. In the physician's report, the professional is asked to indicate whether the impairment restricts those daily living activities and to what degree. In the assessor's report, the professional is asked to identify and describe the level of assistance needed with various tasks under the defined daily living activities.

In this case there are two prescribed professionals, the Appellant's doctor who completed the physician's report and the registered psychiatric nurse who completed the assessor's report.

In September 2014, the doctor reported that the Appellant's impairment directly restricts meal preparation continuously, basic housework continuously and daily shopping continuously. He also reported that mobility outside the home is restricted, but not to what degree. In October, 2014, the nurse indicated that the Appellant needs continuous assistance with walking, with lifting, and carrying and holding, with every aspect of meals, with all areas of basic housekeeping, and with several areas of shopping. The nurse also noted that the Appellant is continuously restricted with transferring in/out of bed and takes significantly longer with bathing, dressing and grooming. The Panel finds that the degree of restrictions reported by the doctor and the nurse are generally the same.

Both prescribed professionals also reported that the Appellant's daughter helps with most of these activities and basically looks after her. Therefore, based on the combined reports of both the doctor and the nurse, the Panel finds that the Ministry did not reasonably determine that the Appellant's severe impairments did not directly and significantly restrict her daily living activities, continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted that she needs continuous help from her daughter and others with most daily living activities. Her daughter looks after her. Also, the Appellant submitted that she uses a cane and a splint. She also needs a walker, a scooter and railings in the bathtub.

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 or an assistive device.

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 needs help with those activities. The doctor reported four activities as continuously restricted and that the Appellant needs help with cooking, cleaning and shopping and her daughter looks after her. The Panel also accepts the Appellant's evidence that the doctor prescribed the splint for her and that she told him she was using a cane at home.

For those activities which are continuously restricted, the nurse reported that the Appellant requires daily assistance, her daughter does them or she needs aids. Specifically, the nurse noted that the Appellant needs a walker, railings on the bathtub, a scooter and a brace for her right hand.

Therefore, based on the information from both prescribed professionals regarding the amount of help and the specific assistive aids the Appellant needs because of direct and significant restrictions to her ability to manage daily living activities, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant does not require help to perform those activities.

Conclusion

Having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence. Therefore the Panel overturns that reconsideration decision in favor of the Appellant.