

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) May 1, 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, that she has a severe impairment and that her severe impairment is likely to continue for at least two years. However, the Ministry was not satisfied that, in the opinion of a prescribed professional, the Appellant’s severe impairment:

- Directly and significantly restricts her daily living activities either continuously or periodically for extended periods; and,
- As a result of those restrictions, the Appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

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 October 2, 2014.
- A physician's report signed by a doctor on December 10, 2014. The doctor did not indicate how long that Appellant has been a patient, only that he had seen the Appellant between 2-10 times in the past 12 months.
- An assessor's report signed on November 28, 2014 by a family nurse practitioner who indicated she had seen the Appellant between 2-10 times and had known the Appellant since November 19, 2014.

2. Appellant's request for reconsideration signed by her on April 21, 2015. The request included a statement, written by another person, that the Appellant has severe balance problems resulting in falls; she is deaf and requires assistance for the majority of her daily living activities. There is no information about who wrote this statement. There is also a letter signed by the Appellant about her application being rejected and also stating that she has had cerebral palsy and deafness from birth.

In its reconsideration decision, the Ministry wrote that it is satisfied that the Appellant's inability to speak or hear is a severe impairment. Therefore, the Panel will summarize only the evidence applicable to the two PWD criteria which the Ministry determined were not satisfied.

Appellant's Medical Conditions/Impairments Restricting Daily Living Activities

In the physician's report, the Appellant's medical conditions/impairments are described as follows:

- Spasm, coordination difficulty due to scarlet fever, hearing loss, asthma, scoliosis.
- Permanent damage from scarlet fever; symptoms will likely continue to progress.
- Noticed worsening hearing since labyrinthitis, worsening lower back pain and neck movement.
- Difficulties with communication caused by motor, sensory, hearing loss.
- Severe hearing loss, unable to sustain any conversation, unable to express by oral speech, communicates by writing notes.
- Her co-ordination is slowly deteriorating. A walker is needed to balance while walking.
- The Appellant can walk 4+ blocks unaided on a flat surface and can climb 5+ stairs by holding a railing slowly; she cannot lift due to poor coordination and she can remain seated for less than 1 hour due to back pain.

In her self-report, the Appellant stated that she is spastic and deaf, and has arthritis in her neck, shoulder and some in her body. She stated that her disability affects her with no control over muscle reflexes. She can do only simple things like cleaning, sweeping, but no hard complex or hard/heavy things.

In the assessor's report, the nurse practitioner reported that:

- The Appellant uses a walker for walking indoors and outdoors; she needs to hold a railing when climbing stairs; and she is independent when standing.
- The Appellant needs continuous assistance with lifting, and with carrying and holding – "able to hold but not carry".

In the physician's report, the following significant deficits with cognitive and emotional functioning are noted: language (oral, auditory), memory, emotional disturbance and impulse control. The doctor signed the page where these deficits are noted, but it is not clear whether he or someone else added "upset easily" and "severe hearing loss, unable to sustain any conversation, unable to express by oral speech, communicates by writing only".

In the assessor's report, the nurse practitioner indicated the following impacts to cognitive and emotional functioning:

- Major impact to motor activity (co-ordination, lack of movement, ritualistic or repetitive actions, extreme tension), to language and to other neuropsychological problems.
- Moderate impact to emotion and to impulse control; minor impact to insight and judgement, to executive and to memory.
- No impact to bodily functions, to consciousness, to attention/concentration, to motivation, to psychotic symptoms and to other emotional or mental problems.
- No comments were added to this part of the report.

Restrictions to Daily Living Activities

In the physician's report, the following information is provided:

- The Appellant is able to live with help from a friend.
- The Appellant has been prescribed medications that interfere with her ability to perform daily living activities; medication to relax/reduce her spasms causing mild drowsiness, confusion.

It is not clear who completed the portion of the physician's report regarding restrictions to the Appellant's ability to perform daily living activities. The nurse practitioner initialed two sections and there also seems to be different writing in that section, as well as other parts of the report. The following information is provided in this section:

- The Appellant's impairment does not restrict her ability to manage personal self-care, meal preparation, management of medications, basic housework and use of transportation.
- Daily shopping is continuously restricted; mobility inside the home is continuously restricted – initialed by "MN"; mobility outside the home is restricted.
- Management of finances is not restricted – initialed by "MN".
- Social functioning is periodically restricted.

It is also not clear who wrote for social functioning - "her friend helps to make decisions half time when she can't"; for degree of restriction - "will likely slowly progress-worsen symptoms"; and, for assistance needed – "need regular assessment to evaluate her assistance."

The nurse practitioner indicated in the assessor's report that:

- The Appellant lives with a friend who interprets, helps with daily living activities.
- The Appellant independently manages all areas of self-care, but needs a railing to hold when bathing.
- The Appellant independently manages all areas of basic housekeeping, all areas of paying rent and bills and all areas of managing medications.
- For shopping, the Appellant independently manages going to/from stores, reading prices/labels and paying for purchases; she needs periodic assistance making appropriate choices and continuous assistance carrying purchases home.
- For meals, the Appellant needs continuous assistance with meal planning – "friend does this

for her”; all other aspects are managed independently.

- The Appellant independently manages getting in/out of a vehicle; uses an assistance device when using public transit – “loses her balance, function inside bus”; needs periodic assistance using transit schedules and arranging transportation – “not used to”.
- For social functioning, the Appellant needs periodic support/supervision with making appropriate social decisions; with interacting appropriately with others – “due to difficulty in communication”; with dealing appropriately with unexpected demands; and, with securing assistance from others.
- The Appellant has marginal functioning with her immediate social network and very disrupted functioning with her extended social networks.

Help with Daily Living Activities

The following information is provided in the physician’s report:

- The Appellant currently is able to live with help from a friend.
- She needs a walker to balance while walking.
- For social functioning, the Appellant’s friend helps to make decisions half the time when she can’t.
- The Appellant needs regular assessments to evaluate the assistance needed with daily living activities.

The nurse practitioner reported in the assessor’s report that:

- The Appellant’s lives with a friend who interprets and helps with daily living activities.
- She needs on going assessments of daily living activities as her symptoms will likely progress slowly.
- Maintaining her independence and safety are important in a care plan.
- The Appellant uses a walker, interpretive services, and a railing as a bathing aid; she will likely need more devices/items in the future.

The nurse practitioner added that her program provides primary care, ongoing assessment of daily living/safety, monitoring the Appellant’s symptoms, medication adjustment, navigating health care and emotional support.

In her notice of appeal, the Appellant wrote that she is physically impaired and deaf, but she provided no additional information for this appeal.

For this appeal, the Ministry stated that it relied on and reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, which determined 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 and/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.

The Panel will consider the parties' positions under the two PWD criteria at issue in this appeal.

Direct and Significant Restrictions to Daily Living Activities

The Appellant submitted that because of her impairments she requires assistance for the majority of her daily living activities. She uses assistive devices and the friend she lives with helps her with daily living activities

In its reconsideration decision, the Ministry wrote that the Appellant's application was problematic because it was evident, based on handwriting differences, that several individuals completed the application. For this reason, it did not accept the information in the physician's report regarding restrictions to the Appellant's ability to perform daily living activities. The Ministry accepted that the assessor's report was completed by the nurse practitioner. However, based collectively on the

information in the reports, the Ministry was not satisfied that the Appellant has a severe impairment that in the opinion of a prescribed professional directly and significantly restricts her daily living activities, continuously or periodically for extended periods.

The Panel's Findings

To qualify for PWD designation, the Appellant must provide a prescribed professional's opinion confirming that her severe 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 such activities are restricted. The prescribed professional must assess and describe the degree of restriction as well as the type and the extent of assistance needed to manage the daily living activities defined in section 2(1) of the EAPWDR. The physician's and assessor's reports portion of the PWD application specifically address these legislated requirements.

In Section E-Summary of Facts, the Panel noted that several sections of the physician's report had different handwriting and initials from someone other than the doctor. The Panel therefore finds that the Ministry was reasonable in not accepting the information in the physician's report regarding restrictions to the Appellant's ability to perform daily living activities. As for the assessor's report, the Ministry accepted that report. The nurse practitioner is a prescribed professional, did see the Appellant at least twice and the handwriting in that report is consistent throughout.

The Ministry determined that the Appellant has a severe impairment because she cannot hear or speak. The nurse practitioner reported little in the way of restrictions to daily living activities from this impairment, except that the Appellant needs periodic assistance with interacting appropriately with others, her friend acts as her interpreter and half the time helps with decisions.

There is information in the record about additional physical health conditions and about deficits to emotional and cognitive functioning which impact or restrict the Appellant's functioning abilities. With respect to those, the nurse practitioner reported that the Appellant uses an assistive device for mobility, needs continuous assistance with lifting and carrying, and needs continuous assistance with meal planning, but with no explanation regarding the latter. The Appellant also needs periodic assistance with making appropriate shopping choices and periodic support/supervision with areas of social functioning. The nurse practitioner provided no information about the extent or the type of assistance or support/supervision needed. With respect to the majority of daily living activities, the nurse practitioner reported that the Appellant manages those independently, including most aspects of personal care, basic housekeeping, most aspects of meals, and all aspects of managing finances and managing medications. Therefore, when all of this evidence is considered, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe impairment that in the opinion of a prescribed professional directly and significantly restricts her daily living activities, continuously or periodically for extended periods.

Need for Help with Daily Living Activities

The Appellant's position is that the friend she lives with helps her with daily living activities. She also uses a walker for mobility, rails when climbing stairs and a rail when bathing.

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 Ministry did recognize that the Appellant has a live-in friend who helps her with daily living activities, but the Ministry wrote that it has not been established whether she requires this assistance or not.

The Panel's Findings

A finding that a severe impairment directly and significantly restricts the Appellant's ability to manage her daily living activities, either continuously or periodically for an extended period, is a precondition for a finding that she requires help as defined by section 2(3)(b) of the EAPWDA. For the reasons stated above, the Panel finds that the Ministry reasonably concluded that the evidence falls short of satisfying that precondition. The Panel also notes that the nurse practitioner reported only that the Appellant's friend helps her, but provided no details about the frequency or extent of such help. Therefore, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant requires help as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision finding that the Appellant was ineligible for PWD designation 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.