

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated June 24, 2015, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The Ministry found that the Appellant did not meet three of the five criteria set out in Section 2(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 found that the information provided does not establish that the Appellant has a severe mental or physical impairment, that, in the opinion of a prescribed professional, significantly restricts her ability to perform daily living activities continuously or periodically for extended periods or that as a result of those restrictions she requires the significant help or supervision of another person to perform daily living activities .

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2

PART E – Summary of Facts

Information before the Ministry at Reconsideration included:

- The Appellant's Persons with Disabilities Designation Application, stamped as received by the ministry February 25, 2015:
 - Self Report: The Appellant stated that she has "difficulty with both hands, both feet and right baby toe, really bad; left arm and wrist/thumb, right shoulder, arm, fingers and thumb, back of shoulders and head, everything".
 - Physician Report: The physician reported that the Appellant is diagnosed with seizures. The physician confirmed that the Appellant's impairment is likely to continue for two years or more, with the comment "chronic". In the section below Diagnoses, there are a number of small arrows at Mood disorders, epilepsy, visually impaired, cerebral vascular accident, arthritis and other, with an illegible notation. The physician drew lines through the Daily Living Activities section of the Physician Report.
 - Functional Skills: The physician reported that the Appellant can walk 4+ blocks unaided, climb 2 to 5 steps, can lift under 2 kg, can remain seated for an unknown period and has no difficulties with communication. With respect to cognitive and emotional function, the physician reported that there are significant deficits with emotional disturbance. Depression is underlined. There is a written comment: "cognition=NO" and "Emotional=? Perhaps (dysthemia)"
 - Assessor Report dated September 20, 2013: This section was completed by a registered nurse and contained the following information:
 - Mental or Physical Impairment: The brief summary in section 1 indicated "Severe joint pain in all joints worse in hands & shoulders. This results in loss of sleep (pain) and loss of grip. Seizure disorder. R (dominant) hand severely limited movement. ". The nurse reported that all aspects of the ability to communicate are satisfactory; and that mobility and physical ability are as follows: Walking indoors, independent, with a comment "Takes 3 times longer than prior to onset of disability."; Walking outdoors independent, climbing stairs takes significantly longer than typical, with the comment "Single stairs only even with [illegible]. Takes at least 8 times longer"; standing, lifting, carrying and holding all take significantly longer than typical, with the comments standing "max 1 – 2 minutes. Must keep moving. Lifting "limited 5 lbs – must use back pack", carrying and holding "unable to carry more than 3 – 5 lbs.". In the comments section, the nurse wrote "'L knee buckles (extremely painful)(dislocation) if applicant stands still for more than 2 min. Surgical cartilage removal at age 16 yrs 2nd surgery in mid-20's. Indoor stairs are taken by sliding on haunches (buttocks)." With respect to cognitive and emotional functioning, the nurse reported major impacts with bodily functions (sleep disturbance underlined), Emotion (depression underlined), attention/concentration and memory. At the top of this section a comment was written "Applicant does not have a formal cognitive impairment but has s/s of same."
 - Daily Living Activities (DLA's): The nurse reported that seven aspects of personal care: dressing, grooming, bathing, toileting, transfers in and out of bed, transfers on and off of chair and going to and from stores take significantly longer than typical, with the comments "able to brush teeth and brush hair with left hand" with respect to grooming and bathing, "takes 5 – 6 times longer than prior to disability" with respect to transfers, "walking 3 - 4 times longer than prior to onset of disability with respect to going to and from stores. Two aspects of basic housekeeping are reported as requiring periodic assistance from another person, with the comments "unable to lift laundry basket" with respect to laundry, "unable to vacuum, sweep floors, etc. (use of left hand only)". Three aspects of personal care: reading prices and labels, making appropriate choices and paying for purchases, are independent. One aspect of

shopping, carrying purchases home, is reported to require continuous assistance. In the section for additional comments, the nurse wrote “Applicant requires assistance 75% of time to fasten buttons or do up zipper on jeans or jacket.” In the section dealing with meals, the nurse reported that the Appellant is independent in meal planning, requires periodic assistance with safe storage of food and requires continuous assistance with food preparation and cooking, with the comment “Unable to lift more than coffee mug – cannot open jars, etc.”

All aspects of paying rent and bills and medications were reported as independent.

With respect to the aspects of transportation, the nurse reported that the Appellant takes significantly longer getting in and out of a vehicle and using public transportation, with the comment “Uses much [illegible] of joints for protection (to minimize pain).” There is no check mark for using transportation schedules and arranging transportation; there is a comment “Cognitively capable”.

- Assistance Provided for Applicant: The nurse reported that family and friends provide help.
 - Assistance provided through the use of assistive devices: No box is ticked, but the nurse wrote “Needs splint or brace for hands, esp. R.”
 - Assistance provided by assistance animals: The nurse checked “yes” and added “has dog that warns her of onset of grand mal seizures.”
 - Included in the Applicant Information section of the PWD application form:
 - A Medical Imaging Consultation Request in the Appellant’s name, dated Jan. 28, 2015
 - An invoice addressed to the Appellant for miscellaneous medical supplies, with a handwritten note “Freedom wrist support”, in the amount of \$46.00, dated Feb. 5, 2015
 - A Medical Imaging Consultation Request in the Appellant’s name, dated Feb. 4, 2015
 - A Therapeutic/Rehabilitation Swim Application in the Appellant’s name, dated Feb. 11, 2015
- The Ministry’s Persons with Disabilities Designation Denial Decision Summary.
 - A copy of a letter to the Appellant from the Ministry dated April 9, 2015 denying her application.
 - The Appellant’s Request for Reconsideration, dated May 21, 2015.

At the hearing, the Appellant read a list of six medications she has been prescribed. She stated that three of them are for seizures. At the hearing the Appellant stated that her seizures cause her to lose bladder control, so she has to wear Depends at night. She stated that she has knee pain which causes her to take a long time to climb stairs, she cannot use her left hand at all, and she has been told it could take up to three years to heal, so she has to use her right hand for everything – she cannot open cans or lift pots and pans to cook. To wash dishes, she lets them soak. The Appellant stated that she has hit her head when having seizures, she bites her tongue and grinds her teeth and has lost fillings. She stated that she relies on the food bank, but cannot carry food home. She stated that she also suffers from recurring Shingles. In response to questions from the Panel, the Appellant stated that her knee injury was due to osteoporosis. With respect to the physician’s marks in the Diagnostic Codes section of the PWD application form, the Appellant stated that the physician asked her about these conditions when he completed the form. The Ministry did not object to the admission of this information. The Panel finds that the Appellant’s oral testimony corroborated her previous evidence, therefore the Panel admitted this oral evidence under Section 22(4)(b) of the *Employment and Assistance Act* as it was in support of information and records that were before the minister when the decision being appealed was made.

The Ministry stated that their decision is based on the applicable legislation and the information provided with the application. The Ministry stated that it is unclear why the Appellant’s restrictions listed are caused by her diagnosed condition, epilepsy. In the Reconsideration Decision, the Ministry noted that it appears that the limitations listed by the Appellant’s assessor are based on her inability to use her left hand due to a fracture; however there is no confirmation of how long the impairment of the hand will last. The Ministry also stated that the frequency, duration and severity of the Appellant’s seizures were not confirmed by her physician. The

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Ministry stated that based on the medical assessment and the legislative criteria, the Appellant's application does not support designation as a person with disabilities.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated June 24, 2015, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The Ministry found that the Appellant did not meet three of the five criteria set out in Section 2(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 found that the information provided does not establish that the Appellant has a severe mental or physical impairment, that her impairment significantly restricts her ability to perform daily living activities continuously or periodically for extended periods or that as a result of those restrictions she requires the significant help or supervision of another person to perform daily living activities .

Legislation

EAPWDA

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).

EAPWDR

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.

The Appellant's position is that she meets the requirements for designation as a PWD due to her seizures, which are uncontrolled, and her physical limitations. The Appellant argued that she cannot hold employment due to her epilepsy and she cannot survive on income assistance.

The Ministry's position is that the Appellant's application for PWD designation does not meet the legislative criteria because it does not provide sufficient information about the frequency, duration and severity of her seizures, and the limitations in performing activities of daily living are not related to her diagnosed condition. In addition, the Ministry argued that the Appellant's application does not contain enough evidence to establish that her impairments directly and significantly restrict daily living activities continuously or periodically for extended periods.

Severe physical impairment

With respect to a severe physical impairment, the Panel notes that the marks made by the Appellant's physician in the section "Diagnostic Codes" are not listed as diagnoses in the section above, and therefore the Panel cannot rely on them. With respect to severity, the Panel notes that the Appellant's physician refers to her impairment as "chronic", and states that the Appellant is able to walk 4+ blocks, climb 2 to 5 steps unaided and can lift under 2 kilograms. In the Assessor's report, the Appellant's nurse reported that she takes significantly longer walking indoors, climbing stairs, standing and lifting and cannot carry more than 3 to 5 pounds, however there is no indication that she requires assistance, periodic or continuous for these activities. In the section dealing with personal care, the assessor reported that all aspects take significantly longer than typical, but no requirement for assistance is noted. Basic housekeeping is reported to require periodic assistance in both aspects in the section dealing with shopping, one aspect, going to and from stores, is reported as taking significantly longer than typical and one, carrying purchases home, is reported to require continuous assistance. Two aspects of meal preparation, food preparation and cooking, are reported to require continuous assistance, one, meal planning is reported as independent and one, safe storage of food, is reported to require periodic assistance. All aspects of paying bills and rent and medications are reported as being performed independently. Transportation, getting in and out of a vehicle and using public transportation, are reported as taking significantly longer than typical. There is no confirmation of a requirement for an assistive device other than the need for a splint or brace for the Appellant's hand. Given that the physician indicated that while the Appellant's condition is chronic, she can walk 4+ blocks, walk 2 to 5 steps and lift 2 kilograms and that the assessor listed only three aspects of daily living activities as requiring periodic assistance and one as requiring continuous assistance, and that there is no information explaining how the diagnosed condition of seizures relates to the impairments, the Panel finds that the ministry was reasonable in concluding that there is insufficient evidence of a severe physical impairment.

Severe mental impairment

With respect to a severe mental impairment, although the physician noted emotional disturbance, the Panel notes that there is no diagnosis of a mental impairment. The Assessor reported four major impacts to mental or physical impairment, bodily functions, emotion, attention/concentration and motivation, however indicated that all aspects of social functioning are performed independently with good to marginal functioning with a notation that the Appellant tends to be isolated. The Panel finds that the Ministry was reasonable in concluding that there is insufficient evidence of a severe mental impairment.

Restrictions in ability to perform DLA's and need for help

The ministry found that the Appellant's Assessor indicated that she requires periodic or continuous assistance with many aspects of daily living activities, however it does not appear that the restrictions are based on her diagnosed condition of seizures, but rather the impairment with her hand, which the physician did not confirm would continue for two years or more and for which he did not provide details of functional ability. The Panel notes that it is unclear how the Appellant's diagnosed condition, epilepsy, directly and significantly restricts the Appellant's ability to perform daily living activities, as the comments in the Assessor's report deal with her hand and joints. As the legislation refers to an impairment that directly and significantly restricts the person's ability to perform daily living activities, the Panel finds that Ministry reasonably concluded that the information provided does not establish that to perform directly and significantly restricted DLA's, the Appellant requires the significant help of another person, an assistive device or an assistance animal.

Panel's decision

In conclusion, the Panel confirms the Ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities, as being reasonably supported by the evidence.