

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry)'s reconsideration decision dated June 29, 2015, finding the Appellant does not qualify for Person with a Disability status. Under section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) in order to qualify for Person with a Disability status, the person must satisfy the Minister that they (1) are eligible to receive income assistance, (2) have reached 18 years of age, (3) have a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years, (4) in the opinion of a prescribed professional, the severe mental or physical impairment directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods, and (5) as a result of those restrictions, the person requires help to perform those activities.

The ministry found that the information provided by the Appellant does not establish that she meets all 5 of the legislated criteria, specifically not the following 3 criteria: Severe impairment, Directly and significantly restricted daily living activities, and Assistance required with daily living activities as a result of significant restrictions.

PART D – Relevant Legislation

The relevant legislation is section 2 of the EAPWDA and section 2 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART E – Summary of Facts

The Appellant did not attend the hearing. The Tribunal confirmed that the appellant was properly notified of the time and place of the hearing in accordance with section 89(b) of the EAPWDA.

The evidence before the ministry at the time of the reconsideration were the reports completed by the Appellant's physician and the report completed by her assessor (in this instance also her physician). At the hearing, the Ministry representative spoke to these reports. The first report, the physician's report, indicates that the appellant is suffering from eating disorder, arthritis, asthma, post-traumatic stress disorder (PTSD) and mood disorder. The physician indicates that the appellant suffered a head injury in a motor vehicle accident. The report also states that the appellant's condition impairs her daily life that she suffers from severe arthritis, chronic pain, severe anxiety, panic attacks and damage from PTSD. It states that her disability is "severe prolonged". However, the report also states that the appellant can walk four or more blocks, that it is unknown how many stairs she can climb, it is unknown what her limitations in lifting are, and it is unknown how long she can remain seated. In the section which asks "Are there any significant deficits with cognitive and emotional function?" the report indicates "unknown" but also checks a number of boxes namely memory, emotional disturbance, motivation, motor activity and attention or sustain concentration. In the section dealing with daily living activities the physician indicated that the appellant's impairment directly restricts her ability to perform daily living activities. However, in the list of activities all of them are checked "unknown" other than social functioning, which is checked "yes". Finally, the physician notes that the Appellant has been a patient of the physician for 10 years and that the physician has seen her 11 or more times in the past 12 months.

The second report, the assessor's report, indicates that the Appellant's ability to communicate is "satisfactory", that her mobility and physical ability are all "independent" though limited by arthritis but that the Appellant's cognitive and emotional functioning issues have a major impact on her daily functioning in a number of categories including bodily functions, emotion, impulse control, and memory. Although in a number of areas such as psychotic symptoms language and motor activity there is no impact to moderate impact. In the section of the report dealing with daily living activities, the report states that the appellant is independent in all categories except for requiring periodic assistance for basic housekeeping, cooking, budgeting and paying bills. The report also indicates that the Appellant's mental impairment does not impair her ability with her immediate social network or extended social networks.

At the hearing the Ministry's representative stated that based on these reports the ministry was unable to establish that the Appellant met the legislated criteria that: 1. The Appellant suffered from a severe impairment, 2. That the appellant's conditions directly and significantly restrict her daily living activities, 3. That the Appellant requires assistance with daily living activities as a result of significant restrictions. This position is based on the fact that there is insufficient or conflicting information provided by the physician in both reports such that the ministry does not have sufficient information to make a determination that the Appellant qualifies for Person with a Disability status.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's reconsideration decision dated June 29, 2015, finding the Appellant does not qualify for persons with a Disability status because she does not meet the legislated criteria was reasonably supported by the evidence, or was a reasonable interpretation of the legislation in the circumstances of the appellant.

The relevant legislation is section 2 of the EAPWDA and section 2 of the EAPWDR.

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).

Daily living activities

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 Ministry based its submissions on the requirement that the Appellant did not meet 3 of the 5 legislative requirements in section 2(2) and 2(3) of the EAPWDA and the PWD physician report and assessment forms as completed by the appellant's physician. Specifically, the reports do not establish that the appellant suffers from severe impairments, that directly and significantly restricts her daily living activities or that she requires assistance with her daily living activities as a result of her significant restrictions.

The panel finds the following:

1. Severe impairment:

The physicians report contains very little information other than that the Appellant can walk for 4 plus blocks. Most of the rest of the report indicates "unknown". The assessment report is somewhat contradictory. While it states that the Appellant's ability to communicate is satisfactory, that she is independent in terms of mobility and physical ability, that she is independent or requires only periodic assistance for all daily living activities, in the section dealing with her cognitive and emotional functioning the physician has indicated that her condition has a major impact on daily functioning in a number of categories. Given that the majority of the information provided indicates that the appellant is not severely impaired by her conditions or is marked simply "unknown", the panel finds that the ministry's determination that the appellant does not suffer from severe impairment was reasonable.

2. Directly and significantly restricts daily living activities:

The physicians report under the title of daily living activities indicates "unknown". The assessor's report under the title of daily living activities indicates that the appellant is "independent" or requires only occasional assistance for all of the daily living activities listed. Given this information the panel finds that the ministry's determination that the appellant is not restricted in her daily living activities was reasonable.

3. Assistance required with daily living activities as a result of significant restrictions:

Again the assessor's report indicates that the appellant is independent in almost all of the listed daily living activities, and in the six daily living activities in which she is not independent requires only

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periodic assistance. Based on this information the panel finds that the ministry's determination that the appellant does not require assistance with daily living activities as a result of significant restrictions was reasonable and was a reasonable application of the legislation in the circumstances of the appellant and confirms the decision.