



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated July 27, 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:

- A handwritten note from the Appellant, undated.
- A copy of a consultation report from a physician dated 19 November 2014, stating that the Appellant has chronic mechanical back pain and left shoulder pain. The physician commented that the Appellant remains independent with her basic ADL's.
- A copy of a report from a physician dated 16 March 2015, stating that the Appellant had an operative procedure and was released with no concerns.
- A copy of a psychiatric assessment carried out 26 August 2014, with a diagnostic assessment of post-traumatic stress disorder, chronic and complex, major depression, recurrent, moderate, generalized anxiety disorder, panic disorder, herpes, dysmenorrhea, migraine and osteoporosis.
- A copy of a consultation report from a nurse practitioner dated 30 March 2015.
- A copy of a letter from a physician to the Ministry dated 1 April 2015 stating that the Appellant suffers from a disability causing functional impairment.
- A copy of the Appellant's Persons with Disabilities Application, stamped as received by the Ministry 14 April 2015.
  - o **Self Report:** The Appellant stated that she struggles with pain every day neck, back, arm and bad migraine, and also struggles with depression and anxiety since early childhood.
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  - o **Physician Report:** The physician reported that the Appellant is diagnosed with PTSD chronic/complex; major depression/moderate dysthymia; generalized anxiety/panic disorder and chronic pain syndrome. The physician confirmed that the Appellant's impairment is likely to continue for two years or more, with the comment "most likely will experience episodes of anxiety and depression to moderate or severe levels in the future".
  - o **Functional Skills:** The physician reported that the Appellant can walk 4+ blocks unaided, climb 5+ steps, can lift under 2 kg, can remain seated with no limitations and has no difficulties with communication. With respect to cognitive and emotional function, the physician reported that there are significant deficits with memory, emotional disturbance and other, specified as chronic pain.
  - o **Daily Living Activities:** The physician ticked "no" in response to the question "Does the impairment directly restrict the person's ability to perform Daily Living Activities?" He reported no restrictions to Daily Living Activities except Social Functioning.
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  - o **Assessor Report:** This section was completed by a Nurse Practitioner.
  - o **Mental or Physical Impairment:** The Assessor reported all aspects of ability to communicate as "Good". Mobility and physical ability: Walking indoors and outdoors and standing are blank. Climbing stairs is indicated as independent, with the comment "fatigue easily". Lifting and Carrying and holding are indicated as requiring periodic assistance from another person. There is a comment "left shoulder rotator cuff injury followed by chronic pain clinic." In the section headed Cognitive and Emotional Functioning, the Assessor indicated a major impact to sleep disturbance and a moderate to major impact with emotion, moderate impacts with attention/concentration and memory, minimal impacts with executive, motivation and other neuropsychological problems. Consciousness, impulse control, insight and judgement, motor activity, language, psychotic symptoms and other emotional or mental problems are indicated to have no impact. There is a written comment that anxiety and depression symptoms can fluctuate from moderate to major depending on circumstances; patient is stable currently for the past 2 months; and memory has been impacted – learning needs reinforcement due to PTSD disassociative [sic] memory issues arise such as remembering details of appointment times. Chronic insomnia for 2 decades may have also contributed to memory issues.
  - o **Daily Living Activities:** All aspects of personal care, basic housekeeping, shopping, meals,

paying rent and bills, medications and transportation are indicated as independent except carrying purchases home, which is indicated as requiring periodic assistance from another person. There is a note "Assistance with lifting for L shoulder injury".

- Social Functioning: All aspects are indicated as independent except Able deal appropriately with unexpected demands, which is indicated as requiring periodic support/supervision, with a note "Due to multiple psychological and physical challenges, also has a son that has very complex health needs." Immediate and extended social network is indicated as marginal functioning, with a note "Respite care for her son would support her to remain independent."
- Assistance provided: "Family" box is ticked, with the comment "one daughter" in the section Assistance provided by other people. No other assistance is indicated. The Appellant does not have an assistance animal.
- Additional Information: There is a note that the Appellant's "complex pain impacts her life on a daily basis from lifting, mobilizing to caring for her son. I am unsure if this pain will resolve even if surgical correction was advised." And "In addition, moderate – severe depression coupled with chronic insomnia impacts her life daily requiring close monitoring of activities as well as regular group participation in supports."

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- A copy of the Ministry's Persons with Disabilities Designation Decision Summary, dated 2 June 2015.
- A copy of the Ministry's letter to the Appellant dated 2 June 2015, advising her of their decision.
- Five copies of prescription forms for five different prescriptions, all dated 25 June 2015.
- A copy of a letter to the Ministry from a psychiatrist dated 13 July 2015, stating that the Appellant has many issues of chronic pain as well as psychiatric social issues, that her pain is under somewhat better control, but is still variable and that her anxiety disorder/major depression are currently only partially managed.
- A copy of the Appellant's Request for Reconsideration, dated 13 July 2015, with attachments.

At the hearing the Appellant was accompanied by the nurse practitioner who completed the assessor portion of her PWD application. The Appellant referred to the psychiatric assessment included with the appeal record and noted the diagnostic assessment of post-traumatic stress disorder, chronic and complex, major depression, recurrent, moderate dysthymia, generalized anxiety disorder, panic disorder, migraine and osteoporosis. She stated that she has back pain causing her problems with getting out of bed, lifting and sitting and problems with cognition and memory. She stated that the assistance she receives with daily living activities is therapy-based and that she attends an outpatient mental health clinic regularly. In response to questions from the Panel, the Appellant stated that she needs help every day with lifting, carrying, memory, driving and cooking, and needs help sometimes with dressing and writing. She stated that her condition has worsened since she completed the application.

The Ministry responded that the decision to designate an applicant as a person with disabilities is based on the legislative criteria and must be supported by the information before it. With respect to functional skills, the physician indicated that the Appellant is able to walk 4+ blocks, climb 5+ steps, lift under 2 kg and has no limitation with sitting. The assessor reported that the Appellant needs periodic assistance lifting and carrying/holding and that she is able to perform all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation independently except one, carrying purchases home. The Ministry stated that the evidence provided by the Appellant shows that she has limitations, but the physician's and assessor's information does not demonstrate a severe physical impairment.

With respect to a severe mental impairment, the Ministry stated that the Appellant's physician reported significant deficits with memory, emotional disturbance and chronic pain, no difficulties with communication and indicated a restriction with social functioning, with a note that it is impacted by pain, insomnia and depression and that during periods of severe depression, daily living activities are maintained but consume her

emotional reserves. The assessor reported major impacts with one aspect of cognitive and emotional functioning, sleep disturbance and one moderate to major impact with emotion. Attention and memory are reported as having moderate impact. The remaining areas of functioning are reported to have no impact or minimal impact. With respect to social functioning, the assessor reported all aspects except the ability to deal appropriately with unexpected demands as independent, with marginal functioning with immediate and extended social networks. The Ministry stated that there is no indication of the duration of the symptoms that are described as episodic in nature. The Ministry therefore concluded that the evidence provided does not support a determination of a severe mental impairment. The Ministry noted that there is no report of a requirement for support or supervision of another person or any assistive device, therefore that criterion was not met.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision 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 .

### 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 the criteria for determining that the she has a severe mental disability have been met. She argued that her back pain affects her ability to perform daily living activities and that she needs assistance every day with lifting, carrying, memory, driving and cooking, and needs help sometimes with dressing and writing.

The Ministry's position is that that the Appellant's application for PWD designation does not meet the legislative criteria because it does not provide sufficient information to establish that a severe impairment directly and significantly restricts her ability to perform daily living activities to the point where she requires assistance or significant help to perform them.

Severe physical impairment

With respect to a severe physical impairment, the Panel notes that the Appellant's physician diagnoses chronic pain syndrome, but did not deal with it in the sections below. In terms of functional skills, the physician indicated that the Appellant can walk 4+ blocks, climb 5+ stairs, lift under 2 kg and can sit with no limitation. She indicated one restriction with daily living activities, with the rest reported to have no restriction. The assessor reported periodic assistance required for lifting and carrying and holding and that all aspects of daily living activities except carrying purchases home are performed independently. 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, the Appellant's physician reported diagnoses of PTSD chronic/complex, major depression/moderate dysthymia and generalized anxiety/panic disorder. She reported significant deficits with memory, emotional disturbance and chronic pain. In the section of the application form dealing with daily living activities, the physician indicated that social functioning is restricted. The assessor, in the section dealing with cognitive and emotional functioning, reported that 7 aspects, consciousness, impulse control, insight and judgement, motor activity, psychotic symptoms and other emotional or mental problems have no impact; 3 aspects, executive, motivation and other neuropsychological problems have minimal impact, 2 aspects, attention/concentration and memory have moderate impact; one, emotion, has a moderate to major impact; and one, sleep disturbance, has a major impact. With respect to social functioning, the assessor reported that one aspect, ability to deal appropriately with unexpected demands, requires periodic support; all other areas of functioning are reported as being performed independently. The Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe mental impairment.

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

The Appellant's physician did not indicate any restriction in her ability to manage self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside or outside the home, use of transportation or management of finances, with social functioning impacted by pain, insomnia and depression. The assessor indicated periodic assistance with carrying purchases home and that all other aspects of physical daily living activities are performed independently. With respect to social functioning, all aspects are indicated as independent except the ability to deal with unexpected demands, which is reported to require periodic supervision. Other than a notation that family provides assistance, there is no report of assistance provided for the Appellant.

The legislation requires that a severe impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. The term "directly" means there must be a link between the severe impairment and the restriction. The direct restriction may be either continuous or periodic. If periodic, it must be for an extended time. In circumstances where the evidence indicates that a restriction is periodic, it is appropriate for the Ministry to require evidence of the duration and frequency of the restriction in order to compare it with the legislative criteria. The evidence in the physician's and assessor's reports is that the Appellant independently manages almost all aspects of her daily living activities.

Based on the evidence, the Panel finds that the Ministry was reasonable in concluding that there is insufficient evidence to conclude that the Appellant's impairments directly and significantly restrict her ability to perform daily living activities. 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. The Panel therefore confirms the Ministry decision.