

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated May 26, 2016 which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that a medical practitioner confirmed that the appellant has a severe physical impairment that is likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA.

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

- A PWD application comprised of the appellant's Self-report (SR), a Physician Report (PR) and an Assessor Report (AR). The PR was completed by the appellant's general practitioner (GP) of 2 years and the AR was completed by a registered nurse (RN) who has known the appellant for 6 years. The SR, PR, and AR are all dated January 8, 2016.
- Medical imaging reports respecting a lower back CT scan performed on December 4, 2015 and a bilateral wrist x-ray performed on December 24, 2015.
- The appellant's reasons for requesting reconsideration, dated May 12, 2016.

Information provided on appeal

The appellant provided a Notice of Appeal dated May 5, 2016, in which she affirmed her inability to hold a job and that pain medications do not ease the pain. The additional information was admitted in accordance with section 22(4) of the *Employment and Assistance Act* as being in support of the information and records before the ministry at reconsideration.

Summary of relevant evidence

Diagnoses

The GP diagnoses degenerative disc disease and osteoarthritis of both hands (X-ray report confirms bilateral wrist osteoarthrosis). Severe disc bulge at L4/L5 (confirmed by CT scan report) causes symptoms in lower back and legs and difficulty walking and standing. Wrist and hand pain makes it difficult to hold and grip things.

Mental Impairment

The GP reports:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

The RN reports:

- Mental abilities are fine.
- Ability to hear and speak is good. Ability to write is poor due to arthritis and ability to read is satisfactory (uses glasses with transitional bifocal lenses).
- Of the 14 listed areas of cognitive and emotional functioning, a moderate impact on daily functioning is reported for bodily functions, noted as sleep disturbance due to pain. A minimal impact is reported in the areas of emotion and motivation. No impact is reported for all other areas. The RN comments "normal grieving due to loss of spouse and health condition."

DLA

In the PR, the GP reports:

- The appellant has not been prescribed medications or treatments that interfere with her ability to perform DLA.
- Mobility inside and outside the home (the DLA move about indoors and outdoors) is continuously restricted.
- Meal preparation and basic housework are periodically restricted – pain in hands and wrists affect her ability to cook and clean.
- Management of medication, daily shopping, use of transportation, management of finances, and social functioning are not restricted.

In the AR, the RN reports:

- Walking indoors and climbing stairs are managed independently. An assistive device is used for walking outdoors – has hard time holding cane due to hand pain.
- All listed tasks of personal care, paying rent and bills, and medications are managed independently.
- For basic housekeeping, laundry is reported as being managed independently and with periodic assistance (help with lifting if basket is heavy), while basic housekeeping takes significantly longer than typical to perform (has to pace self, get help for putting vacuum away).
- For shopping, going to and from stores requires periodic assistance (drives over and gets help from grandson with lifting). Cannot lift over 5lbs. due to pain. Reading prices and labels is reported as both independently managed and requiring periodic assistance from another person. All other listed tasks, including carrying purchases home, are managed independently.
- For meals, meal planning and safe storage are managed independently. Food preparation takes significantly longer (needs to sit and rest) and cooking requires periodic assistance (little help from grandson).
- For transportation, getting in and out of a vehicle takes significantly longer and public transit is “n/a” as it is not available in the appellant’s community.
- All areas of social functioning are managed independently and the appellant has good functioning with immediate and extended social networks.

In the SR, the appellant writes that due to low back pain and both no feeling and the prickly feeling in her feet and up her legs into her buttocks, she cannot sit or stand for long. Her wrists and thumbs ache all the time and she can’t open a bottle or wring a rag. Stirring anything is a battle. She needs frequent rest periods and is exhausted before the day is done. She cannot sleep properly due to the pain. She is unable to work outside the home. In her request for reconsideration, she adds that having very little feeling in her right leg causes her to fall. There is no way she can hold a job. At home she can stop rest and go at her own speed.

Need for Help

The GP reports that there is no help available and that no prostheses or aids are required.

The RN reports that family helps with daily chores and friends help if asked (also shovel snow). The



appellant uses a cane and a borrowed shower chair. The appellant does not require an assistance animal.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD under section 2 of the EAPWDA was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- a severe mental impairment was not established;
- the appellant's daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require the significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA?

Relevant Legislation

EAPWDA

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

Severe Impairment

The legislation provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed

professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define “impairment”, the PR and AR define “impairment” as a “loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration.” While this is not a legislative definition, and is therefore not binding on the panel, in the panel’s opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

The legislation does not require that both a severe physical and a severe mental impairment be established; either is sufficient to meet this legislative criterion. The ministry determined that the appellant has met this criterion, as it was satisfied that she has a severe physical impairment. The panel notes that there is a typographical error in the reconsideration decision where the ministry writes “Therefore, a severe physical impairment has not been established” but that it is clear from the balance of the decision that the ministry accepted the establishment of a severe physical impairment.

Mental Impairment

The appellant does not expressly argue that she has a severe mental impairment.

The ministry’s position is that the information provided by the GP and the RN does not establish a severe mental impairment.

Panel Decision

The appellant is not diagnosed by her GP with a mental condition or brain injury and the GP reports that there are no significant deficits with cognitive and emotional functioning or difficulties with communication. While the RN identifies one moderate and two minimal impacts on daily cognitive and emotional functioning, the RN does not identify a major impact in any area, and reports no impact for the remaining 11 listed areas. Difficulties with writing and reading are noted by the RN, but they are directly attributed to physical limitations, not mental impairment. Additionally, both the GP and the RN report that the appellant independently manages social functioning and do not identify difficulties with decision-making. As the appellant is not diagnosed with a mental condition and given the level of cognitive, emotional and social functioning reported by the GP and RN, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established.

Restrictions in the ability to perform DLA

The appellant’s position is that she is unable to work, cannot sit or stand long, and that due to arthritis in her hands and wrists she is unable to open bottles or stir anything for long.

The ministry notes that while the GP reports the appellant is continuously restricted with mobility inside and outside her home, the GP also indicates that an assistive device is not required. Respecting the periodic restrictions identified for meals and basic housekeeping, the ministry notes that the GP does not explain the frequency or duration of the restriction, therefore a significant restriction for extended periods cannot be determined. Additionally, the GP reports the appellant is

not restricted with all other DLA. Respecting the RN's information, the ministry notes that there is no description of how much longer the appellant takes with those DLA tasks identified as taking significantly longer. Additionally, the ministry points to the narrative describing the periodic assistance required for some tasks, including the comment "little help from grandson", and that the RN reports that the appellant independently manages most DLA tasks. The ministry concludes that as the majority of DLA are performed independently or require little help from others, the information from the prescribed professionals does not establish that impairment *significantly restricts* DLA either continuously or periodically for extended periods.

Panel Decision

The legislative requirement respecting DLA set out in section 2(2)(b) of the EAPWDA is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, in the opinion of a prescribed professional, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are listed in both the PR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative to present a clear and complete description of the extent of the restrictions and their impact on an applicant's functioning. The panel notes that the ability to work is not a DLA set out in the legislation.

In this case, the prescribed professionals are the GP and the RN. Both the GP and the RN identify ongoing limitations in the appellant's ability to walk, though the information is not entirely consistent. The GP notes continuous restrictions in the ability to mobilize indoors and outdoors and that the appellant does not require an assistive device, while the RN reports that the appellant independently manages walking indoors, with no noted limitation, and that she uses a cane, which is hard to hold onto due to hand pain, for walking outdoors.

The GP reports periodic restrictions in the ability to manage meal preparation and basic housework and the RN reports the need for the periodic assistance of another person with one task of each of these DLA – laundry and cooking, respectively. The GP's narrative "pain in hands and wrists affect her ability to cook and clean" does not indicate either the frequency or the duration of the periodic restrictions. The RN does not indicate how often the periodic assistance is required and provides narrative that suggests the need for somewhat minimal assistance, as she writes that assistance is needed with laundry if the basket is heavy and describes the assistance with cooking as "little help from grandson." The RN also indicates that three additional DLA tasks - food preparation (needs to sit and rest), getting in and out of a vehicle, and basic housekeeping (has to pace self, get help to put the vacuum away) - take significantly longer, but there is no indication how much longer these tasks take.

Both the GP and the RN report that the appellant is not restricted in her ability to manage the DLA of personal self-care, medications, finances, and social functioning.

While the GP and the RN identify limitations in the appellant's ability to manage some aspects of DLA, most notably the ability to move about outdoors, the panel finds that the ministry has reasonably

viewed the information provided by the prescribed professionals as establishing that the appellant independently manages the majority of DLA tasks without an assistive device and with minimal assistance from others. Therefore, the panel finds that the ministry reasonably determined that the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant does not expressly address the need for assistance, though she describes certain tasks she cannot perform.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.