

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 30, 2016, which found that the appellant did not meet three of the five 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 her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or 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 these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal 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

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated March 2, 2016, and a physician report (PR) and an assessor report (AR) dated February 2, 2016, both completed by a general practitioner (GP) who has known the appellant since 2001.

The appellant submitted a Request for Reconsideration dated June 16, 2016.

Diagnoses

In the PR, the GP diagnosed the appellant with diabetes (2 years), alcoholism (25 years) and degenerative arthritis (10 years).

Physical Impairment

In the PR and the AR, the GP reported that:

- In terms of health history, the appellant has “...moderate disability due to arthritis.”
- The appellant does not require any prostheses or aids for her impairment.
- For functional skills, the appellant can walk 4 or more blocks unaided, climb 2 to 5 stairs unaided, lift 5 to 15 lbs., and she has no limitation with how long she can remain seated.
- The appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not confirm a need for any of the listed items and wrote “N/A,” or not applicable.

In her self-report and request for reconsideration, the appellant wrote that:

- About 16 months ago, she broke her right upper arm, she had an operation and went to therapy but her arm is still in pain. She is right-handed.
- She has difficulty lifting heavier things, over 5 to 6 lbs., to a higher elevation.
- About 6 or 7 months ago, she started having a bad pain on the left side of her back. This pain moved into her shoulder, her elbow and is sometimes in her wrist. The GP told her it was muscle pain and prescribed pain killers but the pain is still there.
- She was diagnosed with diabetes about 3 months ago and her blood sugar is very high. She is taking medication but it is not working very well yet.
- She has daily headaches and dizziness, which makes her lose her balance and she is very weak most of the time.
- She was diagnosed with arthritis a few years ago, which started with her hand, then her arms and shoulder and is now all over both legs. Her muscles are always in pain.
- She can barely walk or get up from the chair or bed. She always walks with someone. She has fallen in the street before.

Mental Impairment

In the PR and the AR, the GP reported:

- The appellant has no difficulties with communication and no significant deficits in her cognitive and emotional functioning.
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning, the GP

noted "N/A," or not applicable.

- For the section of the AR assessing impacts to social functioning, the GP reported that the appellant is independent in each area, specifically: make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others.
- There was no assessment provided of the appellant's functioning in her immediate and extended social networks.
- In the additional information, the GP wrote "intentional alcohol abuse."

In her self-report and request for reconsideration, the appellant wrote that because she is right-handed, it is not easy to write.

Daily Living Activities (DLA)

In the PR and the AR, the GP indicated that:

- The appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.
- The appellant's impairment directly restricts her ability to perform DLA, specifically the DLA of basic housework (continuously restricted) and daily shopping (continuously restricted). The GP noted that the appellant "uses a shopping cart to transport her groceries" and "housework shared with friend."
- The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, mobility inside and outside the home, use of transportation, management of finances, and social functioning.
- The appellant is independently able to perform every task of most listed DLA, specifically: walking indoors and outdoors, personal care, meals, pay rent and bills, medication, and transportation.
- The appellant is independent with all tasks of the DLA basic housekeeping (including laundry), but also requires periodic assistance with basic housekeeping. The GP described the assistance as "help by friend."
- The appellant is independent with the tasks of the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), but also requires periodic assistance with carrying purchases home. The GP described the assistance as "help by friend."

In her self-report and request for reconsideration, the appellant wrote that:

- She has difficulty lifting heavier things, over 5 to 6 lbs, to much higher elevations like the top shelves of the cabinet, in the shower, cleaning, or shopping, etc.
- The pain makes it hard to sleep, and housework and cooking are also difficult.
- She was looking for an easier job but, because of her pain and difficulties it is not working out.

Need for Help

The GP wrote in the PR that the appellant needs assistance with housecleaning. In the AR, the GP indicated that the help required for DLA is provided by friends. For the help required where none is available, the GP wrote that the appellant needs "help with heavy lifting and cleaning house." In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not confirm a need for any of the listed items and wrote "N/A," or not applicable to the appellant.

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Additional Information submitted after reconsideration

In her Notice of Appeal dated August 2, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she has lots of problem with pain in her legs. She asked her doctor to send her for an X-Ray but he did not. She cannot walk properly, especially in the morning.

The ministry relied on its reconsideration decision, summarized at the hearing.

At the hearing, the appellant stated that:

- She has arthritis in her left arm and all over her fingers. She had broken her right arm and then the arthritis moved into this arm as well. She needs to have the metal and screws replaced in the arm that she broke but she does not want to go through another surgery.
- Her knee has arthritis too and she is seeing her doctor this week because sometimes her feet are so numb she cannot feel them. She has been getting a sharp pain that comes and goes between her ankle and her knee.
- Her family doctor retired about 10 years ago and she sees the doctor who completed the PR and the AR at a walk-in clinic. She often only has about 2 minutes with the doctor. She asked him to send her for an X-Ray, in case there is a problem in the bone, and he would not do so.
- Her doctor gave her medication for the pain and she takes 3 pills a day but still has pain.
- She has developed high blood pressure and has to have it checked every 2 weeks. She has a family history of high blood pressure.
- She can take 4 or 5 steps when she is walking and then she needs to relax. It is not easy.
- She has a steady headache all the time. Her blood sugar level has been high and she has itchiness all over her body, which causes problems with sleeping.
- It is hard for her to take a shower because she cannot reach up. She has to hold the wall because she is afraid of falling.
- When she gets up off a chair, it is difficult.
- She applied to 10 places for part-time work but nothing was suitable. She is not able to step on a ladder since her legs start shaking and she is not stable.
- She cannot write because her arm cannot handle it.
- When she gets on the bus, she needs help and has to hold the rail. She also needs to use the handrail when going up or down stairs.
- Cooking was more difficult when her arm was broken, which was a long time ago now. It is still impossible for her to lift 15 lbs., as reported by her doctor.
- She has been diagnosed with diabetes and started with taking 2 pills a day but now she is taking 5 pills a day, which she has been told is the maximum with this medication. She is also trying to control her diet. She used to have dizziness but now she only has the headaches.

Admissibility of Additional Information

The ministry did not object to the admission of the oral testimony provided by the appellant. The panel considered the information provided by the appellant as corroborating the previous information from the appellant regarding the impacts of her medical conditions diagnosed in the PWD application, with the exception of the discussion of high blood pressure, which was not before the ministry at reconsideration. Therefore, the panel admitted all the information, with the exception of the discussion of high blood pressure, as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her 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 that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for designation as a PWD are set out in Section 2 of the EAPWDA as follows:

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).

Section 2(1) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

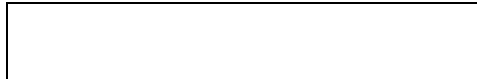
Definitions for Act

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.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (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.

Severe Physical Impairment

The appellant's position is that she has a severe physical impairment due to the pain from arthritis, which started with her hand, then her arms and shoulder and is now all over both legs. Although she takes medication, her muscles are always in pain, and she experiences headaches from her diabetes. The appellant argued that she can barely walk or get up from the chair or bed, and she always walks with someone because she has fallen in the street. The appellant argued that she has difficulties lifting heavier things, over 5 to 6 lbs., to a higher elevation.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry noted that the GP reported functional skills in the middle range of functioning, that the appellant is independent in all aspects of mobility and physical ability, and that she does not require an aid for her impairment.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant’s GP.

In the PR, the GP, who has known the appellant for about 15 years, diagnosed the appellant with diabetes, alcoholism, and degenerative arthritis and wrote that the appellant has a “moderate disability due to arthritis.” The GP reported that the appellant can walk 4 or more blocks unaided, climb 2 to 5 stairs unaided, lift 5 to 15 lbs., and she has no limitation with how long she can remain seated. In her self-report, the appellant wrote that she can barely walk or get up from the chair of bed and she always walks with someone and, in her Notice of Appeal, she wrote that she cannot walk properly, especially in the morning. However, the GP indicated in the PR that the appellant does not require an aid for her impairment and, in the AR, reported that she is independently able to manage all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. At the hearing, the appellant stated that she can take 4 or 5 steps when she is walking and then she needs to relax. The appellant also reiterated her statement in her self-report, that she has difficulties with lifting heavier things, over 5 to 6 lbs., to a higher elevation, and she stated that it would be impossible for her to lift 15 lbs. as reported by the GP.

At the hearing, the appellant stated that she is taking the maximum amount of medication for her diabetes and she no longer feels dizzy but she still experiences daily headaches. The appellant stated that her blood sugar level has been high and she has itchiness all over her body, which causes problems with sleeping. Her knee now has arthritis as well and she is seeing her doctor this week because sometimes her feet are so numb she cannot feel them. She has been getting a sharp pain that comes and goes between her ankle and her knee. There was no additional information provided by the GP at reconsideration or on the appeal regarding these additional symptom or to modify his initial assessments in the PR or the AR and, while the appellant argued that she only gets to see the doctor for a few minutes at a time in the walk-in clinic, the panel finds that the ministry reasonably relied on the information of the appellant’s long-time GP as describing the impacts of her physical conditions on her daily functioning.

Given the level of independent physical functioning reported by the GP, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant did not directly advance the position that she has a severe mental impairment. Regarding impacts to mental abilities (communication), the appellant stated that she had surgery on her right arm and she is right-handed and, therefore, she cannot write.

The ministry’s position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that a mental diagnosis has not been provided and the GP did not report any deficits or impacts with cognitive and emotional functioning. The ministry argued that the GP indicated that the appellant has no difficulties with communication and her ability to communicate is good in all areas.

Panel Decision

The GP diagnosed the appellant with alcoholism, but categorized the diagnosis as part of “other conditions” and not as part of a mental disorder, such as a substance-related disorder. In the additional information in the AR, the GP wrote “intentional alcohol abuse” and he reported that the appellant has no difficulties with communication and no significant deficits with her cognitive and emotional functioning. Although the appellant stated at the hearing that she is unable to write, the GP indicated that the appellant has a good ability to communicate in all areas, specifically with writing, as well as speaking, reading, and hearing. The panel notes that the appellant also characterized her inability to write as due to her physical impairment as opposed to any cognitive deficits. For the section of the AR assessing impacts to social functioning, the GP reported that the appellant is independent in each area, specifically: make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others. .

Given the absence of a definitive mental health diagnosis and the GP’s report of no impacts to the appellant’s cognitive, emotional and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Significant restrictions in the ability to perform DLA

The appellant’s position is that her physical and mental impairments severely impair her and that her ability to perform DLA is significantly restricted to the point that she requires significant help and support from other people.

The ministry’s position is that the information from the prescribed professional does not establish that her impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the GP indicated in the AR that the appellant is independent with all listed areas of DLA and for those few tasks where she also requires periodic assistance from another person, he commented “help by friend” and did not provide an explanation on the frequency or duration of the help required to allow the ministry to confirm that assistance is required for extended periods.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant’s severe impairment directly and significantly restricts her DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant’s impairments either continuously or periodically for extended periods.

In the appellant’s circumstances, the GP reported in the PR that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA. The GP indicated in the PR that the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, use of transportation, management of finances, social functioning, and mobility inside and outside the home. In the AR, the GP reported that the appellant is independently able to perform every task of most listed DLA, specifically: personal care, meals, “pay rent and bills”, medication, and transportation. The GP also indicated that the appellant is independent with her physical function and is not restricted with the DLA of move about indoors and

outdoors as she can walk 4 or more blocks unaided. In her self-report, the appellant wrote that she can barely walk and she always walks with someone and, at the hearing she stated that she needs to rest after taking 4 to 5 steps; however, this degree of restriction is not confirmed by her GP.

The GP reported that the appellant's impairment directly restricts her ability to perform the DLA of basic housework (continuously restricted) and daily shopping (continuously restricted) and he noted that the appellant "uses a shopping cart to transport her groceries" and "housework shared with friend." In the AR, the GP indicated that the appellant is independent with all of the tasks of the DLA basic housekeeping, but she also requires periodic assistance with the task of basic housekeeping, described as "help by friend." The GP further reported in the AR that the appellant is independent with all of the tasks of the DLA shopping but she also requires periodic assistance with the task of carrying purchases home. The GP described the assistance as "help by friend" and did not provide an explanation regarding his assessment of independence while at the same time reporting the need for assistance. The GP also wrote in the AR that the appellant needs "...help with heavy lifting and cleaning house," which suggests that she needs assistance with cleaning tasks that require heavy lifting. In her self-report, the appellant wrote that her difficulty lifting heavier things, over 5 to 6 lbs. to a higher elevation results in difficulties with cleaning and shopping; whereas, the GP reported that she can lift up to 15 lbs. Although the appellant wrote in her self-report that she also has difficulties with cooking, she stated at the hearing that she can manage cooking now as the problem was greater when she had surgery on her broken arm, which was some time ago.

In her self-report, the appellant wrote that she has been looking for an easier job but, because of her pain and difficulties, it is not working out. At the hearing, the appellant stated that she applied to 10 places for part-time work but nothing was suitable. As for finding work and/or working, the panel notes that employability is not a criterion for PWD designation in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

Given the appellant's independence with all but two tasks of DLA and a lack of description and explanation by the GP regarding how often and how long the appellant requires periodic assistance with these tasks, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA, specifically help from her friends.

The ministry's position, as set out in the reconsideration decision, is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons or an assistive device.

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 GP wrote in the PR that the appellant needs assistance with housecleaning. In the AR, the GP indicated that the help required for DLA is provided by friends. For the help required where none is available, the GP wrote that the necessary assistance would be "...help with heavy lifting and cleaning house." In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not confirm a need for any of the listed items and wrote "N/A," or not applicable. At the hearing, the appellant stated that she needs help getting on the bus and that she uses the handrails for stairs and a shopping cart for groceries. The panel notes that handrails and a shopping cart are not assistive devices, as defined in the legislation.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) 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 under Section 2 of the EAPWDA, was reasonably supported by the evidence. The panel confirms the decision and the appellant's appeal, therefore, is not successful.