

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 August 19, 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 the appellant has a severe physical impairment that a medical practitioner has confirmed is likely to continue for at least 2 years. However, the ministry was not satisfied that:

- 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 a 3-page typewritten Self-report (SR) dated January 7, 2016, as well as a Physician Report (PR) and Assessor Report (AR) which are both dated December 24, 2015, and were completed by a general practitioner (GP) who had known the appellant for 4 ½ years and seen the appellant 2 to 10 times in the past 12 months.
- Medical documentation respecting the appellant's knees, including replacement surgery for both knees, and the results of a November 12, 2015 x-ray of the appellant's right hip. As none of the information therein describes the appellant's functioning, it is not summarized below.
- Request for reconsideration submission dated July 27, 2016.

Information provided on appeal

The appellant provided a Notice of Appeal in which she confirmed information she previously provided in her SR and reconsideration submission.

The ministry did not provide additional evidence on appeal, and relied on its reconsideration summary.

Summary of relevant evidence

Diagnoses and history

The GP diagnoses severe osteoarthritis of the hip (pain is becoming unbearable), total knee replacement of both knees, hypertension, and obesity. The appellant is awaiting hip surgery.

DLA

The GP provides the following information respecting the appellant's ability to perform DLA.

- The appellant has been prescribed medications that interfere with her ability to perform DLA. She will need these pain medications on an ongoing basis while awaiting surgery.
- Level of functioning in terms of activities of daily living is severely impaired.
- Osteoarthritis results in restricted range of motion in shoulders, back, and hips.

Move about indoor/outdoors

- Uses a stick as an aid in walking.
- Can walk 1 to 2 blocks unaided; climb 2 to 5 steps unaided, then rests; lift 5 to 15 lbs.; and, remain seated less than 1 hour.
- Due to pain caused by osteoarthritis, walking indoors and outdoors, climbing stairs, standing, and carrying and holding require periodic assistance from another person ("needs help at times"), ongoing restricted range of motion.

Personal care

- All listed tasks are managed independently - dressing, grooming, and bathing, toileting, feeding self, regulate diet, transfers (in/out of bed and on/off chair).

Basic Housekeeping

- Both listed tasks are managed independently - laundry and basic housekeeping.

Shopping

- Going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases are managed independently.
- Carrying purchases home requires periodic assistance from another person.

Meals

- All tasks are managed independently - meal planning, food preparation, cooking, and safe storage of food.

Paying Rent and Bills

- All tasks are managed independently – banking, budgeting, and pay rent and bills.

Medications

- All tasks are managed independently – filling/refilling prescriptions, taking as directed, and safe handling and storage.

Transportation

- Getting in and out of a vehicle and using public transit require periodic assistance from another person. Ongoing pain in hips is developing more and more difficulty getting in and out of vehicle.
- Using transit schedules/arranging transportation is managed independently.

Social Functioning

- All listed aspects managed independently – appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to secure assistance from others, and able to deal appropriately with unexpected demands.

Need for Help

The GP reports that at present the appellant relies on family and friends if she is having difficulty with transport or cleaning her house. Currently uses a cane in view of ongoing pain. May require a walker or wheelchair at a later stage depending on condition. The appellant does not have 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 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:

- 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 requires help, as it is defined in the legislation, 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.

Restrictions in the ability to perform DLA

The appellant's position is that she is not able to do the things she used to be capable of because her osteoarthritis makes it hard to sit, stand, or lay for long periods of time, and also makes walking hard to do. She argues that as she is not able to work, she is disabled.

The ministry's position is that despite indicating the need for periodic assistance with most aspects of mobility and physical ability, the GP indicates that the appellant is capable of performing a majority of her DLA independently. The ministry argues that if the appellant's condition were to significantly

affect her ability to perform DLA, it would be expected that it would at least take significantly longer to perform some of these DLA, but the GP has not indicated that any of these tasks take longer where given an opportunity to do so in the AR. The ministry adds that as the GP has been the appellant's physician for 4 years and has seen the appellant 11 or more times in the past year, the GP likely understands the appellant's condition and restrictions well. The ministry also notes that legislation requires that it be in the opinion of a prescribed professional that DLA are significantly restricted either continuously or periodically for extended periods. The ministry concludes that although the appellant has certain limitations as a result of her medical condition, the information provided by a prescribed professional does not establish that an impairment *significantly restricts DLA 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.

In the appellant's case, the only information from a prescribed professional addressing the ability to perform DLA is provided by the appellant's GP.

The GP indicates that the appellant independently manages all listed tasks of the DLA personal care, basic housekeeping, meals, pay rent and bills, and medications, as well as most tasks of the DLA shopping. The GP does not indicate that these tasks take significantly longer to perform or require the use of an assistive device.

Periodic assistance from another person is required with the DLA moving about indoors and outdoors, one task of the DLA shopping (carrying purchases home), and two tasks of the DLA transportation (getting in and out of a vehicle and using public transit). The panel notes that despite indicating that both listed tasks of the DLA basic housekeeping are managed independently, the GP subsequently comments that if the appellant is having difficulty cleaning her house she relies on friends and family. The GP does not indicate how often or for what duration periodic assistance is required for these activities in order to determine if the restrictions are significant or for extended periods.

Based on the level of independence with which the appellant is reported to manage the vast majority of DLA tasks, and in the absence of information as to the frequency and duration of the periodic assistance required for the remaining DLA tasks, the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she cannot do what she used to and that sometimes she has to use a cane to walk.

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.

Although the evidence indicates that the appellant requires the use of an assistive device, a cane, 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.