

## 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 November 17, 2016 denying the appellant designation as a Person with Disabilities (PWD). The ministry determined that the appellant did not meet all of the criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, Section 2. Specifically, the ministry determined that the information provided did not establish 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.

The ministry determined that the appellant satisfied the other 2 criteria for PWD designation: she has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

## 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

### **Evidence before the Ministry at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included:

- the appellant's Persons With Disabilities (PWD) Application comprised of:
  1. the appellant's self-report (SR) dated May 25, 2016 to which she attached a seven-page letter describing her disability;
  2. a physician report (PR) dated May 22, 2016 completed by the appellant's general practitioner (the GP), who at the time of assessment had treated the appellant for more than 20 years and who had seen the appellant 2 to 10 times in the past year; and
  3. an assessor report (AR) dated May 25, 2016 completed by a social worker (the Assessor), who had known the appellant for 2 weeks and had seen her 2 to 10 times during that period.
- the appellant's request for reconsideration received by the ministry on November 7, 2016, to which the appellant attached a four-page letter that included the following information:
  - she can walk only half a block if she is lucky, and cannot walk alone because her left leg will buckle and she will fall;
  - a friend accompanies her when she walks;
  - she can only use stairs if there is a railing;
  - she experiences unbearable wrist pain if she lifts more than 5 pounds;
  - she cannot sit for more than 45 minutes or stand for 10-15 minutes without extreme pain;
  - she cannot pack things more than a few feet due to wrist, hip and leg pain;
  - her friend assists her with getting in and out of the shower;
  - cooking has become extremely difficult because she is unable to stand more than 10-15 minutes, and a friend prepares meals in quantities for her child;
  - her friend cleans the house twice weekly and does the laundry because she can no longer do housework due to hand and wrist pain or carry laundry downstairs;
  - it takes her an extra hour to get her day started, from getting out of bed to driving her son to school;
  - an occupational therapist works with her child because she cannot do physical activity 80-90% of the time;
  - sometimes she needs to double her medication dose due to pain, which causes nausea and drowsiness.
- additional information relating to her child's developmental disorder.

The PWD application is summarized as follows:

### **Diagnosis**

In the PR the GP notes that the appellant has suffered from widespread osteoarthritis (OA) since 2006 and Generalized Anxiety Disorder since 1976.

### **Physical Impairment**

In her SR the appellant writes that she:

- has significant challenges raising a child with a developmental disorder;
- she showers rather than bathes because it is too painful to climb in and out of the bathtub;
- dressing is difficult due to OA pain and requires an extra 20 minutes;

- she can't make healthy meals because it is too painful to peel, chop, open jars, stand after 10 minutes, and lift heavy pots;
- she can't wash dishes or do general housework for more than 10 minutes due to pain;
- she can shop for a maximum of 20 minutes and finds carrying painful, and she can drive for a maximum of 30 minutes;
- at night she has to change positions several times.

In the PR the GP notes that the appellant has OA in her hips, knees and wrists, causing pain with prolonged periods of sitting and lifting. No surgical intervention is recommended. The GP also notes that the appellant's medication does not interfere with her ability to perform DLA, and she does not require a prosthesis or other aids for her impairment. The GP adds that the appellant can walk 2-4 blocks unaided on a flat surface, climb 5+ steps unaided, lift 2-7 kg (5-15 lbs) and can remain seated for less than 1 hour.

In the AR the Assessor notes that the OA causes *"difficulty moving, functioning as before. All joints/knuckles are affected. Small tasks are now difficult or impossible"*. The Assessor specifically notes the following functional impairments relating to OA: [she] takes significantly longer with walking indoors and outdoors, climbing stairs, standing (*"5 min, then becomes very painful"*), lifting (*"10-12 lbs"*), carrying and holding (*"20 ft max and it would be painful"*).

### **Mental Impairment**

In her SR the appellant states that she is always in a brain-fogged state. Every day is stressful. She often finds herself depressed, shuts people off, and loses her temper easily.

In the PR the GP notes: *"has a chronic generalized anxiety disorder which for the most part is stable with medication"*. The GP also identifies the strain experienced by the appellant in caring for her child. The GP further notes that the appellant has a significant deficit with cognitive and emotional function in the area of emotional disturbance (*depression, anxiety*).

In the AR the Assessor notes that the appellant has anxiety and low self-esteem due to childhood abuse issues. In addressing specific impairments the Assessor notes the following:

Ability to Communicate: reading is good, speaking, writing and hearing are satisfactory. With speaking, *"stress and headaches limit her abilities to have good communication (4-5 days)."*

Cognitive and Emotional Functioning. The appellant's impairment has the following reported impacts:

- Major impact on bodily functions (specifically eating problems, poor hygiene and sleep disturbance: *"pain destroys desire to eat, appetite wanes; issues of balance affected so it is difficult to manage safely in shower/ tub. Pain causes her to awaken frequently."*), consciousness (*"has some feelings of confusion, orientation that sometimes becomes a major concern"*), emotion particularly anxiety, depression (*"panic occasionally"*), impulse control (*"organizing utensils, lining them up on table"*), attention/concentration, memory, and motivation (*"focus lost"*), , motor activity particularly agitation, extreme tension; and other emotional or mental problems (*"frustration, anger over loss of abilities and plans"*)
- Moderate impact on insight and judgement (*"thought she was aware of her conditions"*) and executive functioning (*"focus lost"*);
- Minimal impact on language;
- No impact on psychotic symptoms or other neuropsychological problems.

### Daily Living Activities (DLA)

- In her SR the appellant notes that she showers rather than bathes because it is too painful to climb in and out of the bathtub;
- dressing is difficult due to OA pain, requires an extra 20 minutes;
- she can't make healthy meals because it is too painful to peel, chop, open jars, stand after 10 minutes, and lift heavy pots;
- she can't wash dishes or do general housework for more than 10 minutes due to pain;
- she can shop for a maximum of 20 minutes and finds carrying painful and she can drive for a maximum of 30 minutes.

The GP did not complete Part E in the PR which asks the physician to identify and describe the frequency of direct restrictions on DLA caused by the impairment, and did not comment on the degree of restriction experienced by the appellant. In Part F the GP provided additional comments: *"strain of caring for... child makes it difficult for the appellant to work. OA causes pain."*

In the AR the Assessor noted that the appellant:

- takes significantly longer to perform the following DLA:
  - Personal Care – *all tasks are done as/when able, slowly and painfully. Takes time and care to transfer in/out of bed*;
  - Laundry – *as/when able. Takes time/care*.
  - Meals – including meal planning, food preparation, cooking, and safe storage of food: *easy meals/done fast.*
  - Transportation – getting in and out of a vehicle: *slowly, painfully*, using public transit, schedules and arranging transportation: *can be painful*.
- is independent in all areas of paying rent and bills and managing medication.

The Assessor does not note restrictions to shopping activities, but comments: *"Has vehicle, goes when she feels able. All tasks take more time"*. The Assessor also notes that the appellant carries purchases home in small bags, in her vehicle.

In the section of the AR dealing with restrictions to DLA that relate to social functioning the Assessor drew a strike mark through this section and does not identify any restrictions or note any impairment to the appellant's relationship with immediate and extended social networks, or the need for help from others.

### Assistance Required

In her SR the appellant notes that due to pain and weakness arising from OA she requires her neighbour's help to open bottles and jars and to carry groceries.

In the PR the GP does not indicate that assistance is required.

In the AR the Assessor notes that the appellant requires help from family and friends, adding: *"Daughter comes to help. Friends are available."*

Neither the GP nor the Assessor indicates that the appellant requires an assistive device or service animal.

## PART F – Reasons for Panel Decision

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. Specifically, the ministry determined that the information provided did not establish 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.

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 is in a prescribed class or persons or has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse 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.

### **Severity of Physical Impairment**

The appellant argues that she suffers from OA which causes severe pain and restricts her ability to walk, climb, lift and carry.

The ministry's position is that there is insufficient detail provided by prescribed professionals to establish that the appellant suffers from a severe physical impairment. The ministry acknowledges the appellant's self-report but argues that the medical professionals' lack of detail, with respect to how independent she is and how much longer she takes with her activities, makes it difficult to establish the level of impairment she experiences.

### *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 of 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, who has treated the appellant for more than 20 years, and the Assessor, a prescribed professional (social worker) who has known the appellant for 2 weeks and who has completed the AR on the basis of 2-10 meetings during that 2-week period. The legislation also clearly states that the determination of the severity of the impairment is at the discretion of the minister.

The GP notes that the appellant is able to walk 2 – 4 blocks unaided, climb 5 or more stairs unaided and can lift 5 – 15 pounds. She can remain seated for less than 1 hour. In Part G of the PR the GP comments that the OA causes pain, but does not provide any detail as to the severity of the pain or its frequency and duration.

The Assessor indicates that the appellant takes significantly longer to walk indoors and outdoors, climb stairs, stand (5 minutes), lift (10-12 pounds) and carry (20 feet max and it would be painful) but does not indicate the degree of the pain, how much longer the applicant takes to complete these activities or that the applicant requires assistance with her mobility or physical ability.

The panel acknowledges that the appellant suffers from a medical disorder that causes chronic pain and restricts the her ability to function and perform DLA. However, based on the GP’s reports of a moderate level of function (able to walk 2-4 blocks, etc.) and the lack of detail from the Assessor on the duration of her pain and how often her physical functioning is restricted, the panel finds that the ministry reasonably determined that there was insufficient information provided by the prescribed professionals to establish that the impairment amounts to a severe physical impairment.

### **Severity of Mental Impairment**

The appellant argues that she is always in a brain-fogged state and suffers from anxiety and depression as a result of her chronic pain, inability to work, and the stress involved in raising a developmentally disabled child.

The ministry’s position is that it is unable to reconcile the discrepancy between the PR, completed by the GP who has known the appellant for more than 20 years, and the AR, completed by the Assessor, who has known the appellant for 2 weeks. The GP indicates that the only significant deficit with cognitive or emotional functioning is emotional disturbance (eg. depression, anxiety) while the Assessor indicates that the appellant is severely impacted in most areas of cognitive and emotional functioning. Due to the discrepancy between the two reports the ministry is not satisfied that the appellant suffers from a severe mental impairment. The ministry also notes that the inability to work and the struggle to care for a special needs child are not factors for determining PWD designation.

### ***Panel Decision***

When determining the severity of a mental impairment the ministry considers the nature of the impairment and the extent of its impact on cognitive and emotional functioning, and relies heavily on the evidence of the prescribed professionals. In Part B of the PR the GP states that the appellant’s chronic anxiety disorder is for the most part stable with medication. In Part D, Question 6, the GP indicates that the appellant has significant deficits in only 1 of the 12 listed areas of cognitive and emotional function, and provides no explanatory comments to assist the ministry in determining the severity of the impact of Generalized Anxiety Disorder on the appellant’s functioning. The GP’s evidence differs significantly from the Assessor’s, who indicates that the appellant’s mental

impairment causes a major impact in 9 out of 14 areas of functioning: bodily functions, consciousness, emotion, impulse control, attention/concentration, memory, motivation, motor activity and other emotional or mental problems. The Assessor notes that the appellant has “*some feelings of confusion, orientation that occasionally become a major concern, and feels frustration over the loss of past abilities and plans*”.

The Assessor also notes that the appellant suffers from severe headaches, but headaches are not mentioned by the GP. While the GP indicates no difficulties with communication, the Assessor reports that although the appellant has a satisfactory ability with speaking, writing, and hearing, her “stress and headaches” limit her ability to have good communication “4-5 days”.

The panel notes that there is no additional evidence or explanation to explain the discrepancy between the GP’s and Assessor’s information and despite the physician’s lack of information and detail regarding the appellant’s mental impairment, the panel is inclined to give more weight to information from her long term GP who reports that the appellant is stable with medication. As there is no clear, consistent information from medical professionals regarding deficits with the appellant’s cognitive and emotional function, the panel finds that the ministry reasonably determined that due to the significant discrepancy between the opinions of the two prescribed professionals, the information does not establish that the appellant suffers from a severe mental impairment.

#### **Direct and significant restrictions in the ability to perform DLA.**

The appellant argues that her OA significantly restricts her ability to perform DLA in all areas of personal hygiene, cooking, housekeeping, shopping and transportation.

The ministry argues that because the Assessor has not reported the amount of assistance required for any of the DLA listed in the AR the ministry is not able to determine the degree of restriction and amount of assistance required to complete DLA. The ministry also is not satisfied that the appellant suffers from a severe physical or mental impairment that in the opinion of a prescribed professional directly and significantly restricts the appellant’s ability to perform DLA continuously or periodically for extended periods.

#### *Panel Decision*

EAPWDA Section 2 (2) states that the ministry may designate a person as a PWD if satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and in the opinion of a prescribed professional directly and significantly restricts the person’s ability to perform DLA either continuously or periodically for extended periods. The determination of a severe impairment is a requirement which must be met prior to a determination that a person’s ability to perform DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Earlier in these reasons the panel found that the ministry reasonably determined that the appellant does not suffer from a severe mental or physical impairment.

In the reconsideration decision the ministry also submits that although the Assessor reports that the appellant takes significantly longer with personal care, basic housekeeping, shopping, meals and transportation, and that due to OA even small tasks are difficult or impossible, she does not offer a



detailed description or explanation of how much more time it takes for the appellant to manage her DLA. In the “Personal Care” section the Assessor remarks “*all tasks are done as/when able, slowly and painfully*” but does not specify how often the appellant can accomplish the tasks in question. Similarly the Assessor states that transfers to and from bed and chairs “*take time and care*”, and laundry is done “*as/when able. Takes time/care*”, but does not specify how often these tasks are performed. The Assessor also does not report the amount of assistance required to complete DLAs and does not specify any assistive devices. Although the Assessor is of the opinion that the appellant suffers from a severe mental impairment she has not completed the DLA section relating to Social Functioning. The panel also notes that in the PR the GP did not complete the DLA section or provide comments where invited to do so in Part E of the PR and the GP’s information therefore does not confirm that the appellant is significantly restricted with DLA continuously or periodically for extended periods..

The panel therefore finds that the ministry reasonably determined that the information provided by the prescribed professionals in the PR and AR does not establish that the appellant has a severe impairment that significantly restricts her ability to perform DLA either continuously or periodically for extended periods. The panel also finds that the ministry reasonably determined that the legislative criteria in EAPWDA Section 2 (2) (b) were not met because a severe physical or mental impairment was not established.

### **Help with DLA**

The appellant argues that she requires the help of a neighbour to carry groceries and assist with cooking and housecleaning.

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

### ***Panel Decision***

The panel accepts the appellant’s evidence that she requires assistance with DLA from a neighbour, and the Assessor’s evidence that the appellant’s daughter comes to help and friends are available. However, a finding that a severe impairment directly and significantly restricts a person’s ability to manage DLA either continuously or periodically for an extended period is a precondition to a person requiring “help” as defined by section 2(3)(b) of the EAPWDA. For the reasons provided earlier in this decision, that precondition has not been established in this case.

Accordingly, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as set out in section 2(2) (b) (ii) of the EAPWDA.

### **Conclusion**

The panel acknowledges that the appellant suffers from physical and mental impairments, namely OA and Generalized Anxiety Disorder, and that both of these impairments negatively affect her ability to function and to perform DLA. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry’s reconsideration decision finding the appellant ineligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry’s decision. The appellant is not successful in her appeal.