

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision dated March 2, 2017 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because she did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). The ministry was satisfied that the appellant has reached 18 years of age and that her impairment will continue for at least 2 years; however, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration (“RFR”), the minister was not satisfied that three other criteria were met:

- The appellant has a severe mental or physical impairment;
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of these restrictions, she requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* [“EAPWDR”]. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

## 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 reconsideration consisted of the following:

1. A PWD application comprised of:

- The *Applicant Information and Self-report* (“self-report”) signed by the appellant on October 10, 2016.
- A *Physician Report* (“PR”) completed by a general practitioner (“the physician”) on September 24, 2016, who has known the appellant for 5 years and has seen her 11 or more times in the past 12 months;
- An *Assessor Report* (“AR”) also completed by the physician on September 24, 2016. He indicates filling out the report via “other assessments” and by consulting file/ chart “EMR”.

The PWD application includes the following information:

### ***Diagnoses***

#### PR

- The appellant is diagnosed with anxiety/ depression, chronic pain syndrome, and childhood sexual abuse with no dates of onset provided. Under *Health History*, the physician writes that “chronic hip pain limits mobility to a moderate degree given her age”; depression, anxiety and chronic pain “make gainful employment difficult to attain”; and the appellant has “significant social barriers in her life”.

#### SR

- The appellant writes that she has Anxiety Disorder, depression, and chronic pain from an accident.

### ***Functional Skills***

#### PR

The physician provides the following information regarding any functional limitations:

- The appellant can walk 4 or more blocks unaided on a flat surface;
- can climb 5 or more steps unaided;
- can lift 15 to 35 pounds;
- can remain seated for 1 to 2 hours;
- has no difficulties with communication, and
- has significant deficits with 4 of the listed areas of cognitive and emotional function: Executive, Memory, Emotional disturbance, and Attention/ sustained concentration. No explanation/ comments are provided.

## AR

The physician provides the following information for *Mental or Physical Impairment (Abilities)*:

- The appellant has a satisfactory/ good ability to communicate in all of the areas listed: Speaking, Reading, Writing, and Hearing;
- She is independent with all areas of *Mobility and Physical Ability*: Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting, and Carrying/ holding.
- In indicating whether a mental impairment impacts the appellant's *Cognitive and Emotional Functioning*, the physician checks *No impact* for 4 of the 14 listed areas [Impulse control, Insight/ judgment, Psychotic symptoms, and Other neuro-psychological problems]; *Minimal impact* for 6 areas [Consciousness, Attention/ concentration, Executive, Memory, Motor activity, and Language]; *Moderate impact* for one area: Motivation; and *Major impact* for 3 areas: Bodily functions [sleep disturbance], Emotion, and Other emotional and mental problems [Comments: "insomnia, depression and anxiety, poor coping mechanisms".

## SR

The appellant describes the following impacts to her functions:

- Her depression/ anxiety impact her sleep, concentration, eating, and getting motivated, and socially, she gets "over anxious in new or unfamiliar situations"; feels that people treat her differently; and she "feel(s) isolated and unable to ask for help."
- Her chronic hip pain from a fall affects her daily life and physical functions in that she has "a hard time sitting or standing for long periods of time and has had to take pain medication for it ever since it happened."

## ***Daily Living Activities (DLA)***

### PR

- The physician checks *No*, the appellant has not been prescribed medication/ treatment that interferes with her ability to perform DLA.

### AR

The physician provides the following information for DLA:

#### ***Personal Care, Basic housekeeping, and Shopping***

- The appellant is independent with all listed areas [Additional comments: "She is independent but with difficulty. Not as able as someone her age"].

#### ***Meals, Pay Rent and Bills, Medications, and Transportation***

- The appellant is independent with all areas and no additional comments are provided.

### *Social Functioning*

- The appellant requires periodic support with all areas of *Social Functioning* including: Appropriate social decisions, Able to develop/ maintain relationships, Interacts appropriately with others, Able to deal appropriately with unexpected demands, and Able to secure assistance from others. The physician comments that her social functioning “is more impaired than any other domain.”
- She has marginal functioning with both her immediate and extended social networks. No comments are provided and the physician does not describe any support/ supervision required to help maintain the appellant in the community, or whether there are any safety issues.

### SR

- The appellant reports that when she is feeling really depressed she has a hard time eating; her depression affects her ability to “always enjoy day to life and daily tasks can be overwhelming.”
- Socially, due to her anxiety disorder and depression, she feels isolated and unable to ask for help.
- Her chronic hip pain “affects her daily life”.

### ***Need for Help***

### PR

- The physician check marks *No*, the appellant does not require any prostheses or aids for her impairment.

### AR

- The physician indicates the appellant lives alone.
- No information is provided for *Assistance provided by other people* [this section is left blank].
- The physician also leaves the blank the section for *Assistance provided through the use of assistive devices*.
- He check marks *No*, the appellant does not have an assistance animal.

### SR

- The appellant reports that she is unable to ask for help due to people not understanding her depression/ anxiety issues and judging her as being lazy or crazy.

2. A Request for Reconsideration (“RFR”) signed by the appellant on February 16, 2017 in which she states that her depression/ anxiety affects her on a daily basis - she “often finds it difficult to do things on a daily basis including “to hold down a job”. She adds that if she is having a “bad day”, she has to force herself to at least get out of bed and get dressed. She also finds it “hard to look for help and when I do, I feel like nobody cares.”

3. The ministry's *Persons with Disabilities Designation Denial Decision Summary* and denial letter of January 6, 2017.

*Additional submissions*

Subsequent to the reconsideration decision, the appellant filed her *Notice of Appeal* dated March 10, 2017 in which she describes a family history of depression and suicide, and states that her depression/ anxiety affects her to the point where she "more often than not has "bad" days where I have a hard time coping." Her chronic pain from an old injury also makes it hard for her "to do a lot of what I used to be able to do." The panel finds that her information provides additional corroborating detail on the self-reported severity of her conditions. The panel, therefore, admits the appeal submission under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

In an e-mail to the Tribunal, the ministry states that the ministry's submission on appeal will be the reconsideration summary.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision of March 2, 2017 which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. Based on the information provided in the PWD application and RFR, the minister was not satisfied that three criteria in EAPWDA section 2(2) were met: The appellant has a severe mental or physical impairment; the impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods; and as a result of these restrictions, she requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

**2(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 of persons or that the person 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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR:

### Definitions for Act

**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;

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.

### *Analysis*

The panel provides the following analysis and decision for each of the legislative criteria that the ministry determined were not met.

#### ***Severe mental impairment***

The appellant's position is that her anxiety disorder and depression are severe because they affect her sleep, motivation, and concentration, and daily tasks "can be overwhelming." In addition, these conditions cause her social difficulties including "getting over anxious in new or unfamiliar situations", and isolation with bad days more often than not.

While the ministry accepts that the appellant's diagnosis of anxiety/ depression cause deficits in her cognitive and emotional functioning, the ministry's position is that the information provided by the physician does not establish a *severe* impairment of mental functioning. The ministry argues that the appellant's cognitive and emotional functioning is "only mildly or moderately impacted" given that the physician provided contradictory information in the PR and AR; specifically, in the PR, he indicates significant deficits with Executive, Memory, and Attention/ concentration; whereas, in the AR he notes only a minimal impact in these areas. The ministry argues that the physician's information does not give a clear picture of how the appellant's impairment affects her cognitive and emotional functioning,

In addition, the ministry notes that the appellant is reported to have no significant issues with communication, and while the physician described social functioning as "more impaired than any other domain", the ministry submits that the physician's lack of detail regarding a need for support/ supervision makes it impossible to confirm the presence of a severe mental impairment.

#### *Panel's decision - Severe mental impairment*

The panel finds that the ministry reasonably concluded that the information provided in the PWD application does not establish a severe mental impairment. While the appellant is diagnosed with anxiety and depression, the presence of a serious medical condition does not, in itself, establish a severe impairment and as noted by the ministry, evidence of significant functional restrictions is also required. The physician's assessment in the AR indicates the appellant's cognitive and emotional functions are not impaired to a severe extent in most areas including four areas with *No impact*, six areas with *Minimal impact* [including Attention/ concentration, Executive and Memory], and one area with a *Moderate impact* [Motivation].

In the reconsideration decision, the ministry noted discrepancies between the significant deficits to cognitive and emotional functioning reported by the physician in the PR and the impacts assessed in the AR. In the PR, the physician checks *significant deficits* for Executive, Memory, and Attention/ sustained concentration but does not check any deficits for Motivation; and there is no explanation for

why these areas are assessed, in the AR, as less affected than what was reported in the PR or more affected [in the case of Motivation]. Further, while the physician reports a *Major impact* in three areas in the AR: Bodily functions [sleep disturbance], Emotion, and Other emotional or mental problems [described as "poor coping mechanisms"], in the PR, he provides consistent information only for



emotion [*significant deficits* check marked for Emotional disturbance]. Moreover, he does not provide any further comments or explanation for any of the other cognitive/ emotional functions listed in the PR and AR. As the ministry stated in its decision, given these discrepancies it is difficult to get a clear picture of how the appellant's impairment affects her cognitive and emotional functioning.

As further noted by the ministry, the appellant is also reported to have no significant deficits with communication, and while the physician reports that her social functioning is "more impaired than any other domain", he provides no information or detail, other than check marks on the forms, for each area that is restricted: social decisions, relationships, and interacting appropriately as the situation demands. Moreover, he adds only a general comment in the PR [under *Health History*], writing that the appellant has "significant social barriers in her life." The panel therefore finds that the ministry reasonably determined that the information from the physician for the Social Functioning DLA falls short of establishing a severe mental impairment.

The legislation requires evidence of a severe mental impairment that significantly impacts daily functioning. As the physician presents contradictory information in the PR and AR without explaining the discrepancy, and does not provide any detailed explanation for the restrictions and impacts reported, the panel finds that the ministry reasonably determined a severe mental impairment under section 2(2) of the EAPWDA was not established.

### ***Severe physical impairment***

The appellant's position is that her chronic hip pain causes her to have "a hard time sitting or standing for long periods of time" and the pain makes it hard for her "to do a lot of what I used to be able to do." The ministry acknowledges limitations to her physical functioning due to Chronic Pain Syndrome; however, the ministry was not satisfied that the information provided establishes a severe physical impairment given her wide degree of physical function as reported by the physician [can walk 4 or more blocks unaided, etc.]. The ministry notes that the appellant is independent with all activities requiring mobility and physical ability and she does not require any prostheses or aids for her impairment.

### ***Panel's decision - Severe physical impairment***

The panel finds that the ministry reasonably determined a severe physical impairment has not been established by the information provided. As the ministry noted, the evidence from the physician, in the PR, is that most of the appellant's physical functions are assessed at the least restricted ends of the scale; i.e., she can walk 4 or more blocks unaided on a flat surface and climb 5 of more steps [both are the highest range of ability on the scale]. She can also lift 15 to 35 pounds [second highest level on the scale] and remain seated for 1 to 2 hours [middle range on the scale].

In the AR, she is reported as independent in all areas of *Mobility and Physical Ability* including Walking [indoors and outdoors], Climbing stairs, Standing, Lifting, and Carrying/ holding, and as noted by the ministry there is no indication that she needs any prostheses or aids for her impairment. The panel notes that the physician has also not provided any detailed comments regarding physical restrictions; he makes only one general comment in the PR, "Chronic hip pain limits mobility to a moderate degree given her age."

The legislation requires evidence of a severe impairment that results in significant restrictions to physical functions. While the physician writes that the appellant's hip pain affects her mobility to a moderate degree, the information in the PR and AR indicates that she has only minimal restrictions with functional skills and is independent with all areas of mobility as well as the other physical functions listed on the forms. The panel therefore finds that the ministry reasonably determined a severe physical impairment under section 2(2) of the EAPWDA was not established.

### ***Restrictions in the ability to perform DLA***

The appellant's position is that her impairments significantly restrict her daily activities. In her RFR, she reports that she has difficulty doing things on a daily basis including, on her "bad days", getting out of bed and getting dressed. She reports that her conditions also make it difficult for her to hold down a job and her chronic pain prevents her from being able to function at her previous capacity.

The ministry's position is that the information provided does not establish that the appellant's ability to perform DLA is significantly restricted either continuously, or periodically for extended periods. The ministry notes that the appellant has not been prescribed any medications or treatments that interfere with her DLA, and the physician also indicates that she is able to manage all DLA relating to personal care, housekeeping, shopping; and managing finances, medications and transportation without assistance, although these activities are difficult for her relative to other persons her age.

Regarding Social Functioning, the ministry notes the physician's comments in the AR regarding the appellant's housing situation ["borderline homeless"] but argues that the information does not establish a correlation between the appellant's challenges in securing stable housing and her medical conditions or her ability to perform DLA. Regarding the physician's comment in the PR, that the appellant's conditions "make gainful employment difficult to attain", the ministry notes that employability is not a relevant factor under the legislation when assessing eligibility for PWD designation.

### ***Panel's decision - Restrictions to DLA***

Subsection 2(2)(b)(i) of the EAPWDA requires the minister to be satisfied that in the opinion of a prescribed professional a severe impairment directly and significantly restricts DLA either continuously, or periodically for extended periods. In this case, the prescribed professional is the physician that filled out the forms. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR, with additional details in the AR. Therefore, a 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.

The panel finds that the ministry reasonably determined the physician's evidence does not establish that the appellant's DLA are directly and significantly restricted either continuously, or periodically for extended periods. As noted by the ministry, the appellant has not been prescribed medications or treatments that interfere with her DLA, and she is assessed as independent in 7 out of 8 of the listed DLA, despite having difficulty, relative to her age group, with Personal care, Basic Housekeeping and Shopping. Although the appellant reports that she has bad days more often than not where she finds it difficult to get dressed and to eat, the physician indicates no limitations with either Personal Care [Dressing] or Meals.

While the physician confirms that the appellant's Social Functioning is restricted, in that she has marginal functioning with her social networks and requires periodic support/ supervision with all areas of Social Functioning, his comments associate her restrictions with her housing situation ['borderline homeless and is now being evicted from current premises']. As argued by the ministry, the physician does not provide a description of the support or supervision she requires, nor does it indicate the degree and duration of the support/ supervision she requires. The panel considers such information important for the ministry to determine whether the appellant's ability to manage her social functioning is significantly restricted and if the periodic assistance required is for extended periods.

As the legislation requires evidence from a prescribed professional confirming significant restrictions to DLA either continuously or periodically for extended periods as the result of a severe impairment, and the physician indicates that the appellant is independent with 7 of the 8 listed DLA, the panel finds that the ministry reasonably determined that the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met.

### ***Help to perform DLA***

The appellant submits that she finds it difficult to ask for help because people don't understand her mental health conditions and think it is "something one can just get over" or that she is "just being lazy" when she is having a bad day. The ministry argues that as it has not been established that DLA are significantly restricted, it cannot be determined that *significant* help is required from other persons. The ministry notes that the physician has not confirmed that the appellant uses any assistive devices and he has not described the nature, frequency and duration of the periodic support that the appellant requires for all areas of Social Functioning.

### ***Panel's decision - Help to perform DLA***

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA, the person requires help to perform an activity. Where another person is providing the help, the level of assistance or supervision required must be significant as set out in subsection 2(3)(b)(ii) of the EAPWDA. The physician's evidence confirms that the appellant does not use any assistive devices or an assistance animal and that she has no familial support. Although he reports that she requires periodic support/ supervision with all areas of Social Functioning, he does not indicate that she needs support/ supervision to live in the community nor does he identify any safety issues.

In any event, the panel found that the ministry reasonably determined the information provided does not confirm significant restrictions to DLA that are the result of a severe impairment. As restrictions to DLA are a precondition for needing help with DLA, and that precondition has not been met, the panel finds that the ministry reasonably determined the criterion under subsection 2(2)(b)(ii) of the EAPWDA was not met.

### ***Conclusion***

The panel finds that the ministry's reconsideration decision that determined the appellant is not eligible for PWD designation under section 2 of the EAPWDA was reasonably supported by the evidence. The panel confirms the decision pursuant to sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act* and the appellant is not successful in her appeal.