

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated August 17, 2016 which found that the appellant did not meet all of the 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, that she has an impairment that is likely to continue for at least two years and she has a severe mental impairment. However, the ministry was not satisfied that the evidence established 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 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:

1. The appellant's Persons With Disabilities ("PWD") Application comprised of:

- The Applicant Information and Self-report ("SR") completed by the appellant and dated October 15, 2016; and
- The Physician Report ("PR") dated October 18, 2016 and the Assessor Report ("AR") dated October 18, 2016, both prepared by the appellant's general practitioner ("GP") of 10 years, who treated the appellant 11 or more times in the 12 months prior to completing the PR and AR, and indicated that the source of the information used to complete the PWD application was "office interview with applicant and file/chart information".

2. Letter ("letter") from the appellant's GP, signed and dated February 1, 2017, which stated the following about the appellant:

- She is a single mother of two young children and a care-giver to her 69 year old permanently disabled father who has bipolar disorder.
- She suffers from several medical conditions including: hypertension, Type II diabetes, mellitus, obesity, and major depressive disorder.
- Due to financial constraints she neglects her health and has put on weight and become withdrawn. She lacks motivation and cannot concentrate.
- She has been unsuccessful in obtaining employment or maintaining her lawn mowing and janitorial services as they are too daunting.
- She is incapable of working due to major depression and the lack of financial assistance will adversely affect her children.

3. Request for Reconsideration (RFR) which was signed and dated January 23, 2017.

Diagnoses

In the PR, the GP notes that the appellant has been diagnosed with major depressive disorder (onset January 2015).

Physical Impairment

SR: The appellant described:

- Her medical condition as depression, hypertension and diabetes.
- That she has trouble sleeping, eating, memory loss, uncontrollable crying and experiences anxiety due to financial constraints.
- That she cannot handle the physical labour of mowing lawns without running out of breath and feeling weak.

PR: The GP indicated that the appellant:

- Suffers from obesity, hypertension, asthma and diabetes but did not diagnose her with these medical conditions.
- Is diagnosed with major depressive disorder.
- Gets shortness of breath (SOB) when tired, but the GP left blank the section on functional skills.

AR: The GP indicated that the appellant:

- Is independent in walking indoors and outdoors, standing, lifting and carrying and holding.

- Requires continuous assistance with climbing stairs (with the comment “gets short of breath due to asthma/obesity”).

Daily Living Activities

SR: The appellant described that:

- She experiences a loss of interests in her hobbies and forgets to take her medication.
- Once she starts a task she will not stop until completion even if hours past her normal bedtime.
- Her daily routine includes lunch and dinner preparation, laundry and chores.
- She forces herself to do daily activities such as cleaning.
- She helps her father with aspects of his daily life and that she is finding it harder to make this effort.

PR: The GP indicated that the appellant:

- Is continuously restricted with personal care, basic housework, and management of finances.
- Is periodically restricted with meal preparation (with the comment “when stress increases...exacerbation occurs frequently”).
- Is restricted with use of transportation and management of medication but did not indicate if this restriction was either continuous or periodic.
- In response to the question ‘has the appellant been prescribed any medication and/or treatment that interfere with his/her ability to perform DLA?’ the GP responded “cognitive behavioral therapy” (CBT) without indicating how CBT interferes with the appellant’s DLA.

AR: The GP indicated that the appellant:

- Is independent in all listed tasks of personal care, laundry and 3 of 5 areas of social functioning.
- Requires periodic assistance with basic housekeeping, and all listed tasks under shopping, meals, pay rent and bills, medications, transportation and securing assistance from others (without indicating the type, frequency or duration of the assistance required or how it relates to the appellant’s medical condition).
- Requires continuous assistance with dealing appropriately with unexpected demands (without indicating how the assistance relates to the appellant’s medical condition).

Need for Help

In the PR, the GP notes that the appellant does not require any prostheses or aids for her impairment. In the AR, the GP indicates that the appellant receives help and that help comes from family and friends, and that she does not use any assistive devices or animals.

Evidence on Appeal

A Notice of Appeal (NOA), signed and dated February 14, 2017, which stated the appellant does not feel emotionally or mentally stable at this time to re-enter the workforce.

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 PWD under section 2 of the *EAPWDA*, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant met the age requirement, that she has an impairment that is likely to continue for at least two years and that she has a severe mental impairment. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's 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 criteria for being designated 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 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).

Section 2(1)(a) 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.

Severity of impairment

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

A diagnosis of a serious medical condition or conditions 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 one must consider the nature of the impairment and the extent of its impact on daily functioning. 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 prescribed professionals – in this case, the GP.

Severity of physical impairment

The appellant argued that she suffers shortness of breath, asthma, hypertension, fatigue and Type II diabetes. The GP reiterates these medical conditions in the “letter”.

The ministry’s position as set out in the Reconsideration Decision is that the evidence as a whole, including the appellant’s functional skill limitations, does not support a finding that the appellant has a severe physical impairment.

Panel Decision

As mentioned above, diagnoses of serious medical conditions do not by themselves determine that the physical impairment is severe. In the PR, the GP has not diagnosed the appellant with a physical impairment or condition and did not indicate her level of functional ability. The GP indicated that the appellant experiences SOB. However, the ministry argues that the GP did not describe the frequency of the periods that the appellant is short of breath or the activities which cause SOB. The appellant faces challenges but the ministry is of the view that the challenges she experiences are the result of her mental impairment and not due to a physical impairment.

In the AR the GP indicates that the appellant is independent in 5 or 6 areas of mobility and physical functioning, with continuous assistance required with climbing stairs. The ministry argues that

although the appellant is limited in regards to climbing stairs, a severe impairment of her physical functioning has not been established.

Section 2(2) of the *EAPWDA* requires that the minister must be satisfied that a person has a severe mental or physical impairment that results in restrictions to a person's ability to function independently or effectively. The evidence given by the GP indicates that the appellant's functional ability is good and there is no indication of the help she requires. Therefore the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment.

Restrictions in the ability to perform DLA

The appellant argued that she is restricted in her ability to perform tasks of DLA.

The ministry's position as set out in the Reconsideration Decision is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by her physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

Panel Decision

Section 2(2)(b) of the *EAPWDA* requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his or her DLA, continuously or periodically for extended periods. In the present case, while the appellant has provided evidence of the challenges that she faces with DLA, the legislation is clear that to satisfy the criteria the evidence must come from a prescribed professional. In the present case, this evidence has been provided by one prescribed professional - the GP.

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, a prescribed professional completing these forms has the opportunity to indicate which DLA, if any, are significantly restricted by the appellant's impairments, either continuously or periodically for extended periods. Employability is not a listed criterion in the legislation and as such is not a consideration in the determination of whether an applicant's DLA are restricted by a severe impairment.

The GP addresses DLA in both the PR and AR. In the PR the GP has indicated that the appellant is continuously restricted with personal care, basic housework, and management of finances. The GP indicated that the appellant is periodically restricted with meal preparation. The ministry argues that that GP did not describe the frequency or duration of the periodic restrictions and only stated that when stress increases that appellant is exacerbated frequently.

In the AR, the GP indicated that the appellant was independent in all listed tasks of personal care and laundry. The GP indicated that the appellant requires periodic assistance with basic housework, all listed areas of transportation, paying rent/bills, medications, meals, and shopping. The ministry argues that the GP has not described the frequency, duration or nature of the periodic assistance that is required, and that it is unclear how the appellant's restrictions relate to her medical condition of major depressive disorder. The ministry additionally argues that in the PR the GP indicated that personal care and the management of finances are continuously restricted and in the AR the GP indicated that these tasks require only periodic assistance. The GP failed to explain this discrepancy in the letter too.

In the letter the GP stated that “in the past she [the appellant] would mow the neighbor’s lawn or do janitorial work for the landlord but all this now has become a daunting task” and that the appellant “lacks motivation and cannot concentrate on simple tasks of cleaning the house. Due to lack of knowledge compounded by lack of funds she is barely managing to put a nutritional meal on the table for the children unless she is lucky to get help from the food bank”. The ministry argued that the GP failed to describe the nature or frequency of the restrictions related to house cleaning. The panel notes that the GP also did not describe the nature or frequency of the restrictions related to lawn mowing and janitorial work. In regards to these tasks the GP failed to explain how the appellant’s medical conditions relate to the restrictions.

The panel also noted that in her SR, the appellant stated that she helps her father with his DLA and described her weekly routine with her daughters and the household chores. By her account she is able to prepare lunches, dinner, laundry and chores. She is also able to work past her bedtime to complete tasks. The panel also noted that the GP indicated that CBT interferes with the appellant’s ability to perform her DLA but did not explain how therapy which should help the appellant manage her depression and anxiety actually hinders her ability.

In making its decision in this matter the ministry must consider the evidence and therefore, considering the evidence of the GP as set out in the PR and AR, the panel finds that the ministry reasonably concluded that the evidence was insufficient to establish that the appellant’s impairment significantly restricts her ability to perform tasks of DLA either continuously or periodically for extended periods.

Help with DLA

The appellant argues that she requires help with various tasks of DLA with that help coming from family and friends.

The ministry’s position as set out in the Reconsideration Decision is that because it has not been established that the appellant’s DLA are significantly restricted, it cannot be determined that significant 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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. In other words, it is a pre-condition to a person requiring help that there be a finding that a severe impairment directly and significantly restricts a person’s ability to manage his or her DLA either continuously or periodically for an extended period.

Given that the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel further finds that the ministry’s conclusion that 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*, was reasonable.

Conclusion

Having reviewed and considered all of the evidence at the time of the ministry's reconsideration decision 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 and a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision. The appellant is not successful in her appeal.