

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 22, 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 is likely to continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the minister was not satisfied that:

- the Appellant has a severe mental or physical impairment; and
- 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, the Appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

## 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 minister at reconsideration included:

1. A PWD application comprised of the applicant information signed by the Appellant on March 3, 2017, a Medical Report (MR) dated February 24, 2017 and an Assessor Report (AR) dated February 24, 2017, both completed by the same physician. In the MR, the physician reported that the Appellant has been his patient for 25 years, and that he has seen her 2 to 10 times in the past 12 months. The Appellant completed a self-report.

The PWD application included the following information:

### **Diagnosis**

#### MR

In the MR, the Appellant's diagnosis was reported as generalized anxiety/low mood, recurrent plantar fasciitis and obesity.

#### Self-Report

The Appellant described her condition as severe depression. She wrote that she is anxious and almost agoraphobic, having panic attacks, being full of angst and fatigued. She wrote that she suffers with chronic and acute plantar fasciitis that causes sharp and intense pain.

### **Functional Skills**

#### MR

The physician provided the following information regarding any functional limitations:

- The Appellant can walk 1 to 2 blocks unaided on a flat surface, with a note "without having stop to rest";
- Climb 2 to 5 steps unaided;
- Lift 2 to 7 kg;
- Remain seated 1 to 2 hours;
- Has no difficulties with communication (other than lack of fluency in English);
- Has significant deficits with cognitive and emotional function in the areas of Memory, Emotional disturbance, Motivation and Attention or sustained concentration, with a comment "with low mood/anxiety difficulties with memory concentration focusing on and completing tasks".

#### AR

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

- Ability to Communicate: Speaking, Reading and Hearing are good. Writing is satisfactory.
- Mobility and Physical Ability: walking indoors and outdoors, climbing stairs and standing, lifting and carrying and holding are reported to take significantly longer than typical with the notation "with increased weight and chronic foot pain plantar fasciitis mobility markedly restricted".

The physician reported the following impacts for the 14 areas of Cognitive and Emotional Functioning:

- No impact in 7 areas: impulse control, insight and judgement, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.
- Minimal impact in 2 areas: consciousness and executive.
- Moderate impact in 3 areas: bodily functions, attention/concentration and memory.
- Major impact in 2 areas: emotion and motivation.

## Self-report

The Appellant reported that she has difficulty concentrating, remembering details and making decisions.

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

### MR

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

### AR

### Personal Care

The Appellant is independent in all 8 aspects of personal care with the note "Daughter helps with socks and shoes".

### Basic Housekeeping

- The Appellant takes significantly longer with laundry and basic housekeeping, "daughter helps".

### Shopping

- The Appellant is independent in reading prices and labels, making appropriate choices and paying for purchases and is reported to take significantly longer with going to and from stores and carrying purchases home, "requires assistance from family/daughter".

### Meals

- Safe storage of food is independent; food preparation and cooking are reported to require continuous assistance from another person, "requires daughter's assistance".

### Pay rent and bills

- All 3 aspects, banking, budgeting and pay rent and bills, are independent.

### Medications

- All 3 aspects, filling/refilling prescriptions, taking as directed and safe handling and storage, are independent.

### Transportation

- Getting in and out of a vehicle and using public transit take significantly longer than typical "takes significantly longer and needs assistance". Using transit schedules and arranging transportation is independent.

Under additional comments the physician wrote: "When using public transit requires daughter's assistance due to low mobility and help carrying groceries".

### Social functioning

- All aspects, appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others, require periodic support/supervision.
- The Appellant has marginal functioning with immediate and extended social networks, with the comments "Little socialization other than family", "Only what is required shopping medical appointment" and "Requires daughter's support".

## ***Need for Help***

### MR

- The physician reported *No*, the Appellant does not require any prostheses or aids for her impairment.
- Under Additional comments (*relevant to understanding the significance of the person's medical condition*), the physician wrote "Requires ongoing assistance from family (eldest daughter) for psychological support and help with shopping, cleaning home, cooking, doing dishes".

### AR

- The physician reported that assistance is provided by daughter.
  - In the section asking if help is required but there is none available, what assistance would be necessary, the physician wrote: "would benefit from being able to participate in weight reduction program. This would help with self-image and low mood as well as chronic foot/heel pain due to plantar fasciitis and increase mobility".
  - Under assistance provided through the use of assistive devices, the physician wrote "N/A".
  - Assistance provided by assistance animals is marked *No*.
2. The Ministry's Persons with Disabilities Designation Decision Summary, dated April 27, 2017.
  3. The Ministry's letter to the Appellant advising her of their decision, dated April 27, 2017.
  4. The Appellant's Request for Reconsideration, signed June 7, 2017, in which she wrote that she is suffering with severe depression and her physician has had to prescribe a very serious drug, and that she has to take a chance that she does not succumb to suicidal ideation. She wrote that she is still unable to complete her ADL's on her own and her daughter is with her every day. Her doctor supports her request and believes that she is severely and chronically depressed.
  5. A letter from the Appellant to the Ministry dated May 11, 2017 in which she wrote that she can only physically function with the help of analgesics and her chronic pain affects her ability to perform daily living tasks including carrying laundry or groceries. She wrote that she has gained weight as a result of not being able to walk and her daughter helps her. She wrote that she has lived with depression and anxiety for a long time and it is meshed together with her very low esteem.
  6. A copy of a prescription for Paxil dated February 20, 2017.

At the hearing the Appellant stated that she disagrees with her doctor's assessment of her condition and she wishes she had chosen another assessor. She stated that she has long-lived depression and anxiety and is now on very strong medication. She stated that she has difficulty walking and her daughter helps her. With respect to her depression and anxiety affecting her daily living activities, the Appellant stated that she is afraid of having a panic attack in public and has problems taking transit, so she manages her agoraphobia by not going out at all. She stated that she needs her daughter's help to get going in the morning, that she does not socialize with friends anymore and isolates herself. She stated that she had to quit working due to her plantar fasciitis.

In response to questions, the Appellant stated that her inability to leave the house is due to both pain and anxiety; the pain is always there and the anxiety is frequent. She stated that she can do some shopping such as going to the corner store to pick up a few things, but cannot do a major shop such as going to superstore. She also described how 2-3 times per week she cannot get out of bed for a few hours in the morning without icing her feet because the pain is too bad, and she has to navigate the stairs in her house on her bottom to avoid pain in her feet.

The Ministry referred to the information contained in the Reconsideration Decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which found that the appellant was 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 Request for Reconsideration, the ministry was not satisfied that the following criteria in EAPWDA section 2(2) were met: the Appellant has a severe mental or physical impairment; and 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 those activities.

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

- (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.

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.

### ***Severe mental or physical impairment***

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the appellant's ability to manage the DLA listed in section 2(1) of the EAPWDR. However, section 2(2)(b) of

the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional - in this case, the physician.

*Appellant's position - Severe mental impairment*

The Appellant's position is that she has long-standing depression and anxiety that has become worse over time. She argued that she is now on a strong medication. Her physician, acting as assessor, reported that she has major impacts with two aspects of cognitive and emotional functioning. In the MR, the physician reported significant deficits with memory, emotional disturbance, motivation and attention or sustained concentration.

*Ministry's position – Severe mental impairment*

In the Reconsideration Decision, the Ministry argued that the appellant does not have a severe mental impairment based on the information provided by the physician. The Ministry wrote that the Appellant is reported to have major impacts in emotion and motivation, minimal or moderate impacts in the areas of bodily functions, consciousness, attention/concentration, executive and memory and no impacts in the remaining seven areas. In the assessment of social functioning, the physician indicated that periodic support/supervision is required with appropriate social situations, ability to develop and maintain relationships, interacting appropriately with others and dealing appropriately with unexpected demands, but the ability to secure assistance from others is blank. The Ministry argued that it is difficult to determine the Appellant's overall level of functioning because no information is provided to describe how her level of functioning affects her daily life, and the physician indicates that the Appellant is independent with DLA's that would typically be difficult for someone with a severe mental impairment to manage, such as management of finances or medication. Although the physician indicated that periodic support and supervision is required, other than noting that her daughter's help, no details are provided to describe the support and supervision required, for how long and how often.

*Panel decision – Severe mental impairment*

The panel finds that the ministry reasonably determined the appellant does not have a severe mental impairment based on the information provided. In the MR the Appellant's physician reports significant deficits with four areas of cognitive and emotional function: memory, emotional disturbance, motivation and attention or sustained concentration, with a comment that with low mood/anxiety difficulties with memory, concentration, focusing on and completing tasks. In the AR, the physician reports moderate impacts in the areas of attention/concentration and memory. All aspects of social functioning are reported to require periodic support/supervision, and marginal functioning is reported in the areas of immediate and extended social networks. Based on this analysis, the panel finds that the ministry reasonably determined that a severe mental impairment under section 2(2) of the EAPWDA was not established.

*Appellant's position – Severe physical impairment*

The Appellant's position is that her impairment is severe. At the hearing, she argued that she has difficulty walking and she needs her daughter's help getting ready in the morning. She argued that her pain is constant, and she had to stop working due to it.

*Ministry's position - Severe physical impairment:*

The ministry argued in the Reconsideration Decision that a severe physical impairment has not been established because the appellant was reported as able to walk 1 - 2 blocks unaided, climb 2 - 5 steps, can lift 2 to 7 kg and can remain seated for 1 to 2 hours. The ministry acknowledged that the appellant takes significantly longer than typical walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding, the physician does not describe how much longer it takes to manage in these areas and that she is not reported to require aids or assistive devices.

*Panel decision – Severe physical impairment*

The panel finds that the ministry reasonably determined a severe physical impairment has not been established on the basis of the information provided. As argued by the Ministry, the reported range of function in the MR and AR does not confirm how much longer than typical she requires to perform the listed functions although they are reported to be somewhat limited. None of the listed areas of mobility and physical ability in the AR are reported to require assistance.

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

*Appellant's position*

The Appellant argued that she requires assistance with DLA for extended periods at least two to three times a week due to foot pain and anxiety. She argued that she can perform some DLA's, such as shopping, occasionally, but nothing major. She argued that some days she cannot get up in the morning without help, and stairs are impossible sometimes.

*Ministry's position*

The ministry's position, as set out in the reconsideration decision, is that there is not enough evidence provided by the physician to confirm that a severe impairment significantly restricts DLA continuously or periodically for extended periods. In the reconsideration decision, the ministry noted the physician's assessment in the AR, in which continuous assistance is reported to be required in meal planning, food preparation and cooking, however this level of assistance is not reflected in the MR report of the Appellant's functional skills. The Ministry argued that the Appellant reported that she is unable to carry laundry or groceries or to use transit; however her physician reported she is able to do those things, but takes longer.

*Panel decision – Restrictions to DLA*

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA either continuously or periodically for extended periods. In this case, the Appellant's physician is the prescribed professional. 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.

In a circumstance where the physician's evidence indicates that an applicant has periodic restrictions to her ability to perform DLA or requires significantly longer than typical to perform them, it is appropriate for the Ministry to require evidence of the duration and frequency of the restriction in order to determine if the legislative criterion is met.

The physician, in the MR, reported that the Appellant is able to perform a level of functional skills unaided: walk 1 to 2 blocks, climb 2 to 5 steps, lift 2 to 7 kilograms and remain seated 1 to 2 hours. In the AR, he reported that the Appellant takes significantly longer walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding, but does not indicate a requirement for assistance from another person. In the assessment of DLA's in the AR, three aspects are reported to require assistance: meal planning, food preparation and cooking. The rest are reported to be performed independently or to take significantly longer. Cognitive and emotional functioning is reported to have major impacts in the areas of emotion and motivation; however in the area of social functioning, periodic support is reported to be required, with no details provided. Considering the degree of independence reported and the lack of information regarding frequency and duration of assistance needed, the Panel finds that the Ministry reasonably determined that the evidence provided is insufficient to determine that the Appellant's ability to perform DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b).

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

#### *Appellant`s position – Help with DLA*

The Appellant argued that she requires assistance performing DLA periodically for extended periods, requiring assistance with laundry, basic housekeeping, going to and from stores, carrying purchases home, preparing food and cooking. She argued that she needs her daughter's assistance dressing.

#### *Ministry`s position – Help with DLA*

The Ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

#### *Panel decision – Help with DLA*

The AR indicates that the Appellant does not require any prosthesis or aids for her impairment but that she requires assistance from family, specifically her daughter. The AR indicates that the appellant does not require the use of assistive devices and does not have an assistance animal.

Although the panel notes that the Appellant requires periodic help with some tasks, a finding that a severe impairment directly and significantly restricts a person's ability to manage his 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.

As the panel finds that the Ministry was reasonable in determining that the Appellant does not have a severe impairment that directly and significantly restricts her ability to manage her DLA either continuously or periodically for an extended period of time, the necessary precondition is not satisfied.

Accordingly, the panel finds that the ministry's decision that the Appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was reasonable.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in her appeal.