

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 24 January 2018, which determined that the appellant was not eligible for persons with disabilities designation (PWD) because she had not met all of the legislated criteria under section 2 the *Employment and Assistance for Persons with Disabilities Act*. The ministry determined that the appellant had demonstrated that she has reached 18 years of age and her impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry further determined that the appellant had not demonstrated that she has a severe mental or physical impairment; the appellant's severe mental or physical 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 direct and significant restrictions, she requires help to perform those activities.

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 consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated 11 October 2017, completed by the appellant's general practitioner (GP) who has seen the appellant 2-10 times in the past 12 months and known the appellant for less than 1 year.
- An Assessor Report (AR) dated 11 October 2017, completed by the appellant's GP.
- A Self Report (SR) dated 11 October 2017, signed by the appellant.

The panel will first summarize the evidence from the PWD Application as it relates to the PWD criteria at issue in this appeal.

Diagnoses

In the MR, the GP specifies the following diagnoses as related to the appellant's impairment:

- Rheumatoid arthritis all limbs – onset November 2009
- Fibromyalgia – onset January 2015
- Generalized anxiety – onset January 2105

The GP comments: *long standing (8 years) of debilitating joint pains, anxiety, muscle pains and restricted mobility.*

In the AR, the GP has responded to the question "What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities?" as follows: *severe joint and muscle pains and severe anxiety, lack of social supports.*

Severity of mental impairment

MR:

The GP indicates that the appellant suffers from generalized anxiety.

The GP writes "N/A" in response to whether there are difficulties with communication other than lack of fluency in English.

Under Health History, the GP writes: *Anxiety prevents her from managing her iADLS [independent activities of daily living] - can't do phone calls, manage bills or shopping.*

The GP indicates that the appellant had significant deficits with cognitive and emotional functioning in the areas of memory and emotional disturbance with the comment: *memory deficits progressed within past 2 years -> forgetting words.*

AR:

The GP assesses the appellant's ability to communicate as good in the areas of speaking, reading and hearing and poor in the area of writing with the comment: *cannot hold a pen long due to pain.*

The GP assesses the appellant's cognitive and emotional functioning as having no impact in the areas of language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. The GP assesses minimal impacts on daily functioning in the areas of consciousness, impulse control, insight and judgment, attention/concentration, executive, memory and motivation. Moderate impacts on daily functioning are assessed in the areas of bodily functions and emotion. Major impacts are assessed in the area of motor activity.

SR:

The appellant does not describe a disability or report impacts to her life and ability to care for herself that relate to a mental impairment.

Severity of physical impairment

MR:

Under Health History, the GP writes: *Long standing history of rheumatoid arthritis and fibromyalgia, anxiety disorder causing inability to perform fully her daily tasks – severe pain and stiffness in her joints, difficulties to mobilize, severe pains.*

For functional skills, the GP indicates that the appellant can walk 1-2 blocks unaided, climb 5+ steps unaided, lift 7 to 16 kg (15 to 35 lbs.), and remain seated less than 1 hour.

The GP indicates that the appellant does not require any aids or prostheses.

AR:

The GP indicates the appellant's mobility and physical ability as requiring continuous assistance for walking indoors and outdoors and climbing stairs and independent for standing, lifting and carrying and holding.

SR:

The appellant states that she suffers from pain that can be so bad that she cries while trying to complete her daily tasks. She states that her son helps her with cooking and carrying heavy items. She reports that sleep can be difficult when her pain is high. As well, she states that she cannot walk for long periods, sometimes only 2 blocks (5-10 minutes at times). She states that she does complete her daily tasks and cares for her kids but it sometimes takes a bit longer.

Ability to perform DLA

MR:

The GP indicates that the appellant has not been prescribed medication that interferes with her ability to perform DLA.

The GP indicates that the appellant is not restricted in relation to the following DLA: personal care, meal preparation, management of medications, management of finances and social functioning. The GP indicates that the appellant is restricted periodically with basic housework and daily shopping. The GP also indicates that the appellant is continuously restricted with mobility inside and outside of the home and use of transportation.

In relation to assistance needed, the GP comments: *need help with carrying shopping bags, transportation.*

AR:

The GP indicates that the appellant is independent in all listed personal care activities; the basic housekeeping activity of laundry; the shopping activities of reading prices and labels, making appropriate choices and paying of purchases; the meals activities of meal planning and safe storage; all pay rent and bills activities; all medications activities; and all transportation activities.

The GP indicates that the appellant requires periodic assistance with the meals activities of food preparation and cooking.

The GP indicates that the appellant requires continuous assistance for basic housekeeping; shopping activities of going to and from stores and carrying purchases home.

The GP comments: *require help with transportation (need a scooter), carrying shopping bags and need periodic help with cooking: chopping, peeling, stirring.*

Section 2(1)(b) DLA

The following DLA are applicable to a person who has a severe mental impairment:

Make decisions about personal activities, care or finances

MR:

The GP indicates that the appellant is not restricted in her ability to manage personal self care, meal preparation, medications and finances.

AR:

The GP indicates that the appellant is independent with shopping activities of readings labels, making appropriate choices, and paying for purchases; the meals activities of meal planning and safe storage; all pay rent and bills DLA; all medications DLA; and the transportation DLA of using transit schedules and arranging transportation.

Relate to, communicate or interact with others effectively

MR:

The GP indicates that the appellant has no difficulties with communication and is not restricted in relation to social functioning.

AR:

The GP assesses the appellant's ability to communicate as good in the areas speaking, reading and hearing and poor in the area of writing.

In assessing social functioning activities, the GP indicates that the appellant is independent with appropriate social decisions, developing and maintain relationships, interacting appropriately with others and securing assistance from others. The GP also indicates that the appellant requires periodic assistance/support deal appropriately with unexpected demands. The GP indicates that the appellant has marginal functioning in her immediate (*recent break-up with her partner, good with kids*) and extended social networks.

In response to help required the GP comments: *manages well for now* and in response to safety concerns, the GP comments: *no safety concerns for patient or her kids*.

Help required

MR:

The GP indicates that the appellant needs help with mobility – motorized scooter.

AR:

The GP indicates that the appellant receives assistance from family and friends and provides the comment: *son helps with cooking and house chores. Friends help with driving*.

In response to the prompt to specify what help is required but there is none available, the GP writes: *N/A*

The GP indicates that the appellant uses splints, braces and bathing aids (handrails). The GP responds to the prompt for equipment needed but not being used with the comment: *needs motorized scooter, cost is a barrier, otherwise would use it routinely*.

The GP indicates that the appellant does not receive assistance from assistance animals.

2. Request for Reconsideration

Included with the appellant's signed Request for Reconsideration dated 12 January 2018 is a 5-page typed document, unsigned and undated, entitled "My Pain". In this document, the appellant states that she is using voice to text on her phone to create the document. She explains that she wakes up stiff and sore in the mornings and often doesn't want to get up but must get her children to school. She describes the pain, stress and sometimes anxiety she experiences in completing the tasks necessary to get her children off to school and explains that her son often helps her. She explains that she often takes a nap or rest after the children have gone and then tries to do household chores and plan for dinner. She then bathes and may have a second rest/nap before meeting her children at the bus. She states that she sometimes asks a neighbour to do this for her. Once her younger children have arrived home the appellant prepares a snack and helps them unpack their bags then has a rest before helping with their spelling. After the appellant's son arrives home, he helps her prepare dinner or prepares the dinner under her direction. After dinner, the appellant struggles to get her younger children bathed and to bed and then rests. The appellant states that she has a difficult time with sleeping and she tosses and turns because it hurts to lay in one position or another. The appellant explains that her neighbours help her with driving to appointments and

shopping, carrying, cleaning and food prep as well as listening to her when she experiences frustration, high anxiety and stress. The appellant states that her son also helps her on a daily basis with chores and supervision of her younger children. She explains that on good days she can lift 25 lbs. but on bad days she cannot even lift 5 lbs.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated 02 February 2018, the appellant wrote as reasons for appeal that while her GP said she can lift 15-35 lbs. this is on a 'good day' and she does not have very many good days; on a 'bad day' she cannot even lift a jug of milk. She states that her hands and arms let her down every day and her son helps her every day around the house and getting her girls to the bus.

With the Notice of Appeal, the appellant submitted a 1-page typed document dated 31 January 2018. In this letter, the appellant reiterates that her GP's assessment of her lifting ability reflects a 'good day' and on bad days she cannot lift a jug of milk or a pen. She explains that her son helps her everyday. She states that her DLA are restricted and she depends on many people to help her through the day. She argues that it isn't fair for her son to do everything for her. She states that she can barely walk around the house and it is agonizing to walk to the bus stop 2 blocks away. She cannot take her kids to the park and has had to give up the things she loved to do, including knitting, crocheting, video games, and baking. She argues that if she does anything "too big or too much" she pays for it the next day, not being able to get out of bed or help around the house.

Appeal Submissions

Prior to the hearing the appellant submitted a letter (Appeal Letter) from her GP dated 8 February 2018. In this letter, the GP states that the appellant is his patient and suffers from chronic pain caused by severe rheumatoid arthritis, fibromyalgia, depression and anxiety. He states that clarifications to the appellant's functional capacity are being provided at the appellant's request. He states that she can walk 1-2 blocks unaided but experiences significant pain and discomfort and often has to literally crawl, usually depending on other people for walking and stair climbing tasks. He reports that she can climb 5+ steps but reports excruciating pain, often has to crawl and requires support of family or friends. The GP states that the appellant's lifting capacity is very limited and she often reports that she cannot lift a cup or small milk carton. The GP also states that the appellant reports that she cannot sit for more than 15 minutes and usually requires a reclined position for rest. The GP states that the appellant reports limitations in social functioning because she often cannot remember the right words to use. He states that the appellant can manage bills/rent. Finally, the GP states that the appellant reports significant restrictions with meal preparation daily and cannot cook for herself and cannot cut, chop or handle kitchenware for more than 1-2 minutes at a time.

At the hearing, the appellant stated that she has a hard time understanding the reconsideration decision. She argued that she has a hard time getting around and getting things done, even though she does eventually get things done or get help to do them. She explained that she cannot lift and arranges with her son to have milk and other things put into smaller containers. She states that she has issues with stairs, cannot sit for long, needs help to get up and cannot stand for long because her legs collapse. She explained that she works with her son to clean the house and do food preparation; she is teaching him as they go and he helps her every day. As well, 2 neighbours help her a lot with groceries and her kids. She stated that holding things is difficult. As well, she stated that walking can be difficult and she doesn't always make it to the bus stop; the driver will ensure her girls make it to her. She stated that her children want to go to the park and she cannot take them. The appellant stated that the information in the Appeal Letter is accurate and she believes it clarifies information in the PWD application.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal documents, Appeal Letter and at the hearing is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because this information provides some reiteration and explanation in support of information and records before the ministry at reconsideration. In reaching this conclusion on admissibility, the panel notes that the ministry stated that it had no objection to the admission of the Appeal Letter and did not state any objection to information provided at the hearing or with the Notice of Appeal.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that:

- the appellant has a severe mental or severe physical impairment;
- that the appellant's severe mental or physical 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 those restrictions, she requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

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 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.

(4) The minister may rescind a designation under subsection (2).

The following section of the *EAPWDR* applies to this appeal:

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

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Severity of impairment

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The legislation makes it clear that the determination of severity is at the discretion of the minister, considering all the evidence, including that of the appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment.

Severity of physical impairment

In the reconsideration decision, the ministry determined that it was not satisfied that this criterion had been met. In making this determination, the ministry considered the functional skills assessment by the GP noting that the appellant is able to walk 1-2 blocks unaided, climb 5+ steps unaided, is limited to lifting 7 to 16 kg., and can remain seated for less than 1 hour. The ministry argued that while the GP states in the MR that the appellant requires constant help walking long distances and requires continuous assistance with walking indoors and outdoors in the AR, he also indicates that she can walk 1-2 blocks unaided. As well, the ministry argued that while the GP has indicated in the MR that the appellant requires constant help with carrying shopping bags and periodic assistance with lifting and carrying/holding in the AR, he also indicates that she can lift 15 to 35 lbs. As well, the ministry argued, the GP has not described the frequency or duration of periodic assistance required. The ministry noted that the GP's assessment did not include information to specify how much less than 1 hour the appellant could remain seated. The ministry argued that while the GP has indicated that the appellant requires continuous assistance with stairs in the AR, he indicates in the MR that she can climb 5+ steps unaided. The ministry's conclusion on this criterion was that a severe impairment of the appellant's physical functioning had not been established.

The panel finds that the ministry's determination was reasonable. The panel notes that the assessments of the appellant's functional capacity and mobility and physical ability assessments in the MR and AR are not consistent with one another and do not provide a clear picture of the appellant's ability to function independently. The information provided by the appellant is also somewhat inconsistent. For instance, in the SR the appellant reports that she cannot walk for long periods, sometimes only 2 blocks (5-10 minutes at times), meanwhile in the Notice of Appeal and at the hearing the appellant argued that she cannot accomplish the 2 block walk to the bus stop to meet her children after school. In the SR, the appellant states that she does complete her daily tasks and cares for her kids but it sometimes takes a bit longer, meanwhile at reconsideration and at the hearing the appellant argued that she cannot complete her daily activities without help from her son and neighbours. The appellant also argued that some of the inconsistencies in the information reflect the difference between her good days and bad days and that the information provided in the Appeal Letter should help to clarify. The panel notes that the Appeal Letter does provide some additional detail and explanation but does not specify whether the information is based on an assessment of good days or bad days. The panel finds that the information provided in the assessments reflects an individual with a number of serious medical diagnoses but does not provide a clear, consistent and detailed account of the impacts of these diagnoses. The panel finds that the ministry's determination, that a severe physical impairment has not been established, is reasonably supported by the evidence.

Severity of mental impairment

In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe mental impairment. The ministry noted that the GP's assessment in the MR did not indicate that the appellant has difficulties with communication. The ministry considered that in the MR the GP indicates deficits in the areas of emotional disturbance and memory and in the AR the GP assesses minimal impacts to memory and moderate impacts to emotion. The ministry also considered that no major impacts to cognitive and emotional functioning were assessed in the majority of listed areas. . The ministry concluded that the cumulative impacts to cognitive and emotional functioning did not indicate a severe mental impairment.

As well, the ministry considered the GP's assessment of the appellant's social functioning abilities. In this consideration, the ministry took note of the GP's MR assessment of no restrictions with social functioning and AR assessment of independence in four of the five listed areas of social functioning. The ministry noted that the GP has indicated that the appellant requires periodic assistance with dealing appropriately with unexpected demands, but argued that the assessment does not include information as to the frequency or duration of support required. As well, the ministry noted that the appellant is assessed as having marginal functioning in her immediate and extended social networks but receives help from family and friends and is managing well for now. The ministry concluded that the information provided had not established a severe impairment in mental functioning.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. The panel notes the absence of communication difficulties, safety concerns and a need for support or supervision to maintain the appellant in her community. The panel notes that the GP's assessments relating to decision-making indicate that the appellant is independent in these areas. As well, the panel notes that while the appellant has mentioned "pain, stress and sometimes anxiety" in her reconsideration submission, she did not mention a mental impairment in the SR nor did she argue in Notice of Appeal or at the hearing that she suffers from a mental impairment or that the ministry was unreasonable in concluding that a mental impairment had not been established. The panel finds that the ministry's conclusion that the information provided does not establish a severe mental impairment and that this criterion was not met is reasonably supported by the evidence

Direct and significant restrictions in the ability to perform DLA

The legislation specifies that the minister assess direct and significant restrictions in the ability to perform DLA in consideration of the opinion of a prescribed professional. This does not mean that other evidence should not be considered, but it is clear that a prescribed professional's evidence is fundamental. At issue in this assessment is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR applicable to a person with a severe mental or physical impairment.

The ministry was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA. In reaching this conclusion, the ministry noted that the appellant has not been prescribed medication that impacts her ability to perform DLA. The ministry considered the GP's commentary that the appellant is restricted with phones, calls, bills and shopping but indicates in the MR and AR assessments that the appellant is independent with management of finances and paying rent/bills. The ministry considered that the MR assessment indicates that the appellant is continuously restricted with transportation but the AR assessment indicates that she is independent with all transportation activities. The ministry argued that while the GP indicates that the appellant requires help with carrying shopping bags, he indicates that she can lift 15 to 35 lbs. The ministry argued that the MR assessment indicates that the appellant is not restricted with meal preparation but that AR assessment indicates that she requires periodic assistance with food preparation and cooking. The ministry noted that the GP's assessments in the MR and AR do not describe the degree of restriction or information about the frequency and duration required where restrictions are assessed as being periodic in nature. The ministry concluded that the assessments provided did not provide enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods.

The panel finds that the ministry's determination that the assessments provided do not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel finds that, in relation to the areas where some periodic restriction is assessed, the GP has not provided sufficient information in relation to the nature, degree and duration of the assistance required by the appellant to establish that there are significant restrictions for extended periods in the appellant's

ability to perform DLA. As well, the panel finds that the assessments provided by the GP in the PWD application are not sufficiently consistent and detailed to reflect significant restrictions to DLA. The panel notes that the appellant has argued that the GP had only met her twice at the time of completing the PWD application and now he has seen her more. She argues that the Appeal Letter clarifies the conflicts in the MR and AR. The panel finds that the Appeal Letter does provide some additional detail and clarification; for instance, the panel finds that the Appeal Letter provides confirmation that the appellant can manage rent/bills independently. The Appeal Letter also states that the appellant reports significant restrictions with meal preparation on a daily basis, which does provide some clarification in relation to the AR's indication of periodic assistance. However, the panel notes that much of what is stated in the Appeal Letter appears to reflect the appellant's self-reported restrictions and limitations as opposed to assessment by the GP. The panel notes that the legislation specifies that direct and significant restrictions to DLA must be in the opinion of a prescribed professional. Given the limitations in the information before the ministry, the panel concludes that the ministry's determination that this criterion has not been met is reasonably supported by the evidence.

Help required

The legislation requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. The establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the reconsideration decision, the ministry determined that as it had not been established that appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required. While the information provided demonstrates that the appellant does receive assistance from other people, uses splints, braces and bathing aids and would benefit from a motorized scooter, the panel has concluded that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As such, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant had not met all of the legislated criteria for PWD designation, was a reasonable application of the legislation in the circumstances of the appellant and reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.