

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 23 March 2018, which determined that the appellant was not eligible for Persons with Disabilities (PWD) designation 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; nor that as a result of direct and significant restrictions, she requires help 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

Evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated November 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 since February 2017.
- An Assessor Report (AR) dated 17 October 2017, completed by the appellant's Social Worker (SW) who has seen the appellant 11+ times in the past 12 months and know the appellant since February 2017.
- A Self Report (SR) dated 30 August 2017 signed by the appellant, accompanying which is a 2-page typed statement signed by the appellant with a notation indicating that it was prepared with the assistance of the SW.

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:

- Cognitive impairment/learning disability – onset 1985
- Anxiety/depression – onset 1999
- Left foot pain and numbness/backache – onset 1999
- Gastro-oesophageal reflux disease (GERD) – onset 1985
- Squamous papilloma (benign) – onset 2017

Severity of Physical Impairment

MR:

Under Health History, the GP writes that the appellant has a cognitive impairment and is not able to manage finance or work. Other life skills are affected, and she needs and has ongoing help from a friend. She also suffers from anxiety/depression and is on medication. As well, the appellant suffers from ongoing back pain, left foot pain and hip pain as well as GERD and ongoing GI symptoms.

For functional skills, the GP indicates that the appellant can walk 1-2 blocks unaided, climb 2-5 steps unaided, lift 15 to 35 lbs. and remain seated without limitation.

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

AR:

The SW describes the appellant's impairment as: *learning disability and lower back pain. Foot and leg (left) weakness and pain due to pinched nerve.*

The SW assesses the appellant's mobility and physical ability as independent and taking significantly longer for walking indoors and outdoors (*takes 2-3 times longer, cannot walk more than 2 blocks*); independent for climbing stairs and standing; and requiring periodic assistance for lifting and carrying and holding (*requires continuous assistance to lift, carry or hold anything heavier than 10 lbs.*). The SW provides the comment: *lower back pain, nerve pain and changes to strength and leg mobility restrict these activities.*

SR:

The appellant states that she suffers from pain and numbness in her left foot and lower leg from arthritis and pinched nerve in her back. She explains that 3-4 times per week she takes pain medications and modifies her activities to manage her discomfort. As well, she reports being woken up 3-4 nights per week due to pain or cramped muscles in her back or leg. She states that she has minimal stairs in her home and does not lift/carry more than 10 lbs. She reports difficulty getting dressed and getting up from kneeling. She states that she is fearful of a fall, especially outside.

Severity of Mental Impairment

MR:

The GP has ticked 'yes' in response to whether there are difficulties with communication other than lack of fluency in English and indicates that the cause is cognitive.

The GP does not indicate whether the appellant has significant deficits with cognitive and emotional functioning but indicates the cause to be emotional disturbance.

AR:

The SW assesses the appellant's ability to communicate as satisfactory in the area of speaking (*difficulty expressing ideas*), poor for reading (*can read children's books*) and writing (*words bigger than 3 letter require assistance to spell & understand*), and good for hearing. The SW provides the comments: *can copy names and words, but cannot independently remember how to spell them later on. Still cannot spell/write brother's or grandchildren's names.*

The SW has assessed the restrictions/impacts to the appellant's cognitive and emotional functioning as:

- Major impact to emotion, attention/concentration, executive, memory, language and other neuropsychological problems;
- Moderate impact to consciousness;
- Minimal impact to impulse control and motor activity; and
- No impact to bodily functions, motivation, psychotic symptoms and other emotional or mental problems.

The SW has provided the comments: *if too much stress is present, then confusion starts and [appellant] will shut down and will have difficulty speaking and thinking through a complex problem. [Appellant] continues to have anxiety & panic responses and does not cope well with unexpected change. Repetitive/obsessive thinking on half completed tasks. [Appellant] continuously fidgets to help manage anxiety during meetings.*

SR:

The appellant reports that she has always had a learning disability and has great difficulty with reading, writing and math. She explains that she has a hard time with writing names, as well as managing finances and appointments. She states that she is nervous around people as she worries about her comprehension and needing to write. She states that she also suffers from anxiety and depression, resulting from an abusive marriage. She reports getting help daily from people she trusts, including friends and her roommate, to navigate complicated situations, manage bills and unexpected events. She reports avoiding larger social situations because she cannot read the situation and feels agitated and panicked. She states that she is intolerant to noise and cannot live in a city.

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 her ability to perform personal self care, meal preparation, management of medications, basic housework, mobility inside of the home, use of transportation and social functioning.

The GP indicates that the appellant is restricted in her ability to perform daily shopping (continuous), mobility outside of the home (continuous) and management of finances (continuous or periodic not specified).

The GP provides the following comments regarding the degree of restriction:

*Shopping: not able to handle the payment. Not able to manage finances.
Mobility outside the home < 2 blocks (walking).*

The GP provides the following comments regarding assistance required for DLA: *assistance from another person (most time, a friend).*

AR:

The SW indicates that the appellant is independent in all listed personal care activities and takes significantly longer with dressing (*guide leg and foot into clothing*).

The SW indicates that the appellant is independent with all basic housekeeping activities.

The SW indicates that the appellant is independent with the shopping activities of going to and from stores and paying for purchase (*only uses debit card*), which takes significantly longer; requires periodic assistance making appropriate choices and carrying purchase home (*requires assistance to carry over 10 lbs.*); and requires continuous assistance reading prices and labels (*cannot read labels – goes by pictures*).

The SW provides the additional comments: *[Appellant] cleans in small amounts to avoid completing big cleans, as this would increase pain. Difficulty in making purchases if the logo changes because [appellant] will not know what the product is. If [appellant] visits another town she requires to be accompanied to know which products to buy. [Appellant] will only use her debit card to avoid making change or knowing if she will have enough cash on hand.*

The SW indicates that the appellant is independent with all listed meals activities (*only plans for the day*).

The SW indicates that the appellant is independent with budgeting, requires periodic assistance with banking and continuous assistance with paying rent and bills (*reviews monthly bills every month with roommate*).

The SW indicates that the appellant is independent with all medications activities.

The SW indicates that the appellant is independent with getting in and out of a vehicle. Using public transit (*not available in town*) and using transit schedule (*would not be able to understand schedule*) are marked "N/A".

The SW provides the additional comments: *[Appellant] seeks assistance to do online banking and will ask a friend to come into the bank 30-40% of the time to help explain the situation and to make [sure] [appellant] is not getting taken advantage or led in the wrong direction.*

The SW has assessed the appellant as independent with the social functioning areas of: appropriate social decisions (*will know when to leave a situation. If [appellant] thinks a situation would be difficult to leave, she would avoid the area all together*); interacting appropriately with others (*will avoid/walk away from conflict, even if it means [appellant] would miss or go without*); and securing assistance from others (*knows where to seek help*). The SW indicates that the appellant requires periodic support in dealing appropriately with unexpected demands (*does not handle unexpected events and requires consultation with parents or trusted person*) and continuous assistance with developing and maintaining relationships (*very limited social circle*).

The SW indicates that the appellant has marginal functioning in her immediate (*able to maintain few long-term relationships*) and extended social networks (*will avoid larger groups because of limits to understanding & expression*).

The SW describes support/supervision required to maintain the appellant in her community as: *support to navigate complex situations and difficulty standing up for own values in the face of confrontation.*

Help required

MR:

The GP indicates that the appellant requires assistance from another person.

AR:

The SW indicates that the appellant receives assistance from family, friends and health authority professionals, with the comment: *[Appellant] speaks to her parents multiple times a week, seeks assistance from roommate daily and connects with social worker bi-weekly.*

The SW indicates that the appellant does not receive assistance from assistive devices or assistance animals.

2. Additional Documents submitted with PWD application

- Cognitive Assessment dated 2 May 2017 completed by the SW
- X-Ray report dated 18 June 2008 – thoracic spine
- X-Ray report dated 10 June 2008 – chest, lumbar spine
- X-Ray report dated 17 May 2005 – left foot, abdomen

3. Request for Reconsideration

A Request for Reconsideration, dated 23 February 2018, is signed by the appellant. Included with the request for reconsideration is a 1-page letter dated 20 March 2017, from the SW (SW Letter).

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

Notice of Appeal

In the Notice of Appeal dated 6 April 2018, the appellant provides as reasons for appeal: *Disagree with Ministry's decision.*

Appeal Submissions

At the hearing, the appellant argued that it is unfair that she was denied PWD designation because she has a lot of difficulties and needs help. She stated that this is the first time that she has lived alone, having moved from living with her parents to living with the person she married. She reported that this is the first time she has come out with all of her difficulties. She argued that she has always had a learning disability, which she stated is hereditary, and did not have appropriate supports to assist her in her education. She stated that she ended up leaving school due to frustration as the school didn't seem to know what to do with her and she was bullied a lot. She stated that she cannot work and would feel safer having a regular PWD income each month without the stress of being cut-off. The appellant reported being able to get to appointments, shopping, etc. on her own as she drives but requires assistance once she arrives to complete her shopping and receives assistance from a friend for this.

The appellant's GP attended the hearing with the appellant and stated that she believes it would be reasonable for the appellant to receive financial support, as she cannot handle working. The GP reported that the appellant cannot handle the financial aspects of shopping as she has difficulty with calculations. As well, the GP reported that the appellant suffers from stress and anxiety as a result of her current situation. The GP indicated she would be referring the appellant to a psychiatrist for further assessment of her cognitive impairment.

The appellant's SW also attended the hearing with the appellant and reported that the appellant has been in a high stress situation for the past year and she believes that PWD designation would help the appellant with income and navigating other issues. She reported that the appellant did quite well on a cognitive screen and not so well on a financial competence assessment. She argued that this demonstrates a need for help with financial decisions and bills. The SW reported that the appellant has difficulty with confidence and functional skills relating to finances; she is unable to use cash but can use a debit card and remember her PIN. The SW reported that PWD designation would provide stable finances and medications coverage for the appellant, which would reduce the anxiety, depression and stress she experiences due to inconsistent spousal support.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal consists of argument and will be considered on that basis. The panel finds that the oral evidence provided by the appellant, GP and SW at the hearing consisted of information and argument in support of information and records that were before the ministry at reconsideration and is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

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 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 finding that the assessment of the appellant's ability to walk and climb stairs unaided, lift and remain seated was not indicative of a severe impairment. The ministry also noted that while the SW indicates that the appellant requires assistance with lifting and can only lift up to 10 lbs., the GP has indicated that she can lift up to 35lbs. The ministry found that even if the appellant were only able to lift up to 10 lbs. this is sufficient for lifting a variety of household and shopping items. As well, the ministry determined that neither taking two-three times longer with an act of mobility or being limited to walking 1-2 blocks is not indicative of a severe impairment of physical functioning. 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 on this criterion 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 do not provide a consistent and coherent picture of the appellant's ability to function independently. The panel finds that the information provided in the two assessments is inconsistent in a number of areas, including walking indoors and outdoors and lifting. As well, the panel notes that the information provided by the appellant, the GP and SW have discussed the appellant's inability to work. However, the panel notes that employability or vocational ability is not a criterion for PWD designation nor is it a DLA set out in the regulation. The panel finds that the information provided reflects an individual with limitations but does not provide sufficient and consistent information establishing a severe physical impairment. 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 appellant does not have a severe mental impairment. The ministry noted that the GP's assessment in the MR indicate that the appellant has cognitive difficulties with communication but does not describe the nature of these difficulties. As well, the ministry noted, the GP has not indicated that there are severe deficits to the appellant's cognitive and emotional functioning but indicates emotional disturbance. The ministry noted that the GP has indicated that the appellant is independent with social functioning, but the SW has indicated that there are various restrictions with social functioning. The ministry also considered the SW's assessment of impacts to cognitive and emotional functioning, noting that the AR indicates major, moderate or minimal impacts to several areas that have not been indicted in the MR as having any deficits. The ministry noted that while the SW reported difficulties with reading and writing, the GP did not provide information suggesting deficiencies at the severity indicated by the SW. The ministry noted marked discrepancy in the assessments of severity of mental impairment by the GP and SW and considered that both practitioners had known the appellant for the same amount of time and had seen her a similar number of times, finding that there were insufficient grounds to place more weight on the assessments of the SW than the GP. The ministry concluded that a severe impairment of mental functioning has not been established.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonably supported by the evidence. The panel finds that the GP's and SW's assessments of cognitive and emotional functioning in the MR and AR are not consistent with one another and in many areas do not support one another, with the SW's assessment in the AR indicating a more severe impairment than the MR assessments. As a result, the panel finds that the assessments provided in the MR and AR do not provide a clear and coherent picture of the appellant's mental impairment. The panel finds the ministry's conclusion that there are insufficient grounds to

place more weight on the SW's assessment than the GP's to be reasonably supported by the evidence. As such, 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, as listed in section 2(1)(a) and (b) of the EAPWDR, in consideration of the opinion of a prescribed professional. While this does not preclude consideration of other evidence, the legislation it is clear that the opinion of a prescribed professional is fundamental. In this instance, the prescribed professionals are the appellant's GP and SW.

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 interferes with her ability to perform DLA. As well, the ministry considered that the GP has indicated that the appellant is independent with the majority of listed DLA, but restricted continuously with shopping (making payments) and mobility outside of the home (walking more than 2 blocks). The ministry considered the GP's assessment of restricted ability to manage finances, but noted that there was no description of the frequency or duration of this restriction. As well, the ministry noted that there were no deficits to cognitive and emotional functioning in the MR that would relate to restrictions with shopping (making payments) and finances. The ministry also considered the SW's assessment of DLA, noting that most DLA are assessed as independent. However, where the SW indicates activities take longer, there is no description of how much longer is required. As well, where the SW indicates activities require periodic assistance, no description of the frequency or duration of assistance required has been provided. The ministry noted that while the SW indicates that the appellant requires assistance with attending to bills and an inability to count change, the SW has also indicated that she is independent with budgeting. The ministry also noted that while the SW indicates some restrictions with social functioning, the GP indicates no restrictions with social functioning. The ministry concluded that there was not enough evidence to confirm that the appellant's ability to perform DLA is significantly restricted continuously or periodically for extended periods.

The panel finds 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 reasonable. The panel notes that the majority of DLA are assessed as independent in both the MR and AR. As well, the panel finds that the assessments do not provide sufficient information regarding periodicity in relation to the activities for which periodic assistance is indicated. This results in a lack of clarity with respect to whether periodic assistance is required for extended periods as required by the legislation. For instance, in relation to carrying purchases home the SW has written "*requires assistance to carry over 10 lbs*". in response to the prompt to "Explain/Describe (include a description of the type and amount of assistance required)". No response has been provided to the same prompt in relation to periodic assistance required for banking. In relation to dealing appropriately with unexpected social demands, for which periodic assistance is also indicated, the SW has written "*does not handle unexpected events and requires consultation with parents or trusted person*" in response to the prompt to "Explain/Describe (include a description of the type and amount of assistance required)". As well, the panel finds that the assessments in the MR and AR are not consistent with one another and do not, when considered together, plainly depict significant restrictions to DLA. As such, 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 is significantly restricted, it cannot be determined that significant help is required. The panel finds that the information provided clearly demonstrates that the appellant does receive help and/or supervision for DLA from family and friends. However, as the panel has concluded that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA has not been established, the panel must also find that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant is not eligible for PWD designation, was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.