

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated October 30, 2018, which found that the appellant did not meet three of the five 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 and that the appellant's impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- 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

Information before the ministry at reconsideration

A PWD application comprised of the appellant's Self-Report (SR) dated July 13, 2018, a Medical Report (MR) dated July 23, 2018 by the appellant's general practitioner (GP) who has seen the appellant 2-10 times in the past 12 months and an Assessor Report (AR) dated August 15, 2018 completed by a Registered Psychiatric Nurse (RPN) who has had only one appointment with the appellant.

The appellant's Request for Reconsideration (RFR) dated October 18, 2018

Diagnoses

In the MR, the appellant's GP identified the following specific diagnosis giving rise to the appellant's impairment; Osteoarthritis – ankles and hands with an onset of 2018, Depression and Anxiety Disorder both with an onset of 1999.

Additional comments provided indicate that the appellant's osteoarthritis is a permanent condition and is likely to worsen over time.

Anxiety and Depression – Cause some impairment of attention and short-term memory.

In the AR where asked to describe the appellant's mental or physical impairments that impact her ability to manage daily living activities, the RPN wrote; severe depression started 10 years ago – led to a drug addiction for 2 1/2 years, gained 100 lbs., worsening arthritis in hands and feet so can't work, and depressed and anxious.

Physical Impairment

Under Health History, the GP writes:

Osteoarthritis – Unable to stand more than 2-3 hours, can walk slowly for 30 minutes on level ground, she has quite advanced arthritis in her hands- this restricts repetitive use and heavy lifting with her hands.

In the MR, when asked if the appellant requires any prostheses or aids for her impairment, the GP reported "No". For functional skills, the GP reports that the appellant is able to walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, lift 5-15 lbs and remain seated without limitation.

In the AR, the RPN describes the appellant as independent while walking indoors and standing (limited to 2 hours – max) and requiring periodic and continuous assistance from another person and taking significantly longer than typical for walking outdoors and climbing stairs (stiff in the morning, not alone- anxiety, no - when holding anything). For lifting and carrying and holding it was noted that she requires continuous assistance from another person and takes significantly longer than typical (arthritis in both hands and feet). The RPN comments that the arthritis in both ankles restricts walking to 3 blocks maximum due to pain –"Accompanied". "Requires help with laundry due to stairs."

In her Self-Report, the appellant writes that she is not able to stand or work more than 3-4 hours without being in pain. She states that any work or activity, typing, writing etc. is pretty much the same. The appellant indicates that she is having problems with getting proper exercise so she is not gaining weight and that she has been going to the pool even while some things like kicking her feet cause pain.

Mental Impairment

In the MR, the GP indicates the appellant has no difficulties with communication.

The GP identifies the following significant deficits with cognitive and emotional function; emotional disturbance and attention or sustained concentration. Comments made are; some problems with short term memory, chronic anxiety

and depression.

In the AR, the RPN notes the appellant's good ability to communicate in the areas of speaking, reading and writing (anxiety in front of people) while noting under hearing that she can become forgetful of some words when anxious.

With respect to cognitive and emotional functioning, the RPN notes no or minimal impacts for consciousness, language, psychotic symptoms, other neuropsychological problems and executive. Moderate impacts were noted for insight and judgement, attention, memory and motivation. Major impacts were indicated for bodily functions, emotion, motor activity, impulse control, and other emotional or mental problems.

The appellant is noted to have good functioning with her immediate social network (sticks to family) and marginal functioning with extended social networks.

Comments provided are that the appellant needs financial assistance, she can no longer work at job which she had to quit in April 2018, she wants to go to aqua fit but can't afford it and she wants to stay fit but arthritic feet are painful and that she is obese.

In her Self-Report, the appellant states that not being able to do what she is used to doing is having a negative toll on her depression and anxiety.

Daily Living Activities

In the MR, the GP reports that the appellant has not been prescribed medication that interferes with her ability to perform DLA.

The GP reports that the appellant is independent with her ability to perform personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home and management of finances. The appellant is indicated as continuously restricted with mobility outside the home and use of transportation with additional comments; she cannot walk far with groceries, she does not drive, her mother takes her shopping and bus use is restricted because of arthritis in her ankle.

In the AR, the RPN reports the appellant's DLA under each area as follows:

- Personal care; dressing, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair are managed independently. With grooming, it is indicated as taking significantly longer than typical (lacks interest).
- Basic Housekeeping; laundry and basic housekeeping are noted to require continuous assistance from another person (she can't manage stairs and lacks motivation).
- Shopping; continuous assistance from another person or unable is indicated for going to and from stores (too anxious to go alone) and carrying purchases home (needs help) while she is noted as independent in the other aspects of reading prices and labels, making appropriate choices and paying for purchases.
- Meals; meal planning, food preparation and cooking require periodic assistance from another person (roommate and daughter help) while she is independent with the safe storage of food.
- Pay Rent and Bills; banking requires continuous assistance (mom drives her, phone is cut off), while budgeting and pay rent and bills is indicated as managed independently.
- Medications; filling/refilling prescriptions, taking as directed and safe handling and storage are indicated as managed independently (mom or roommate drive).
- Transportation; getting in and out of a vehicle is managed independently, while using public transit and using transit schedules and arranging transportation is noted as 'NO-too painful'.
- Social Functioning; appropriate social decisions, able to develop and maintain relationships (sticks to family), interacts appropriately with others and able to deal appropriately with unexpected demands (gets very anxious and depressed) are managed independently, while able to secure assistance from others requires continuous support/supervision (feels useless).

The RPN makes additional comments that the appellant requires constant help with grocery shopping, house cleaning, laundry, cooking and dishes because of the combination of depression and anxiety and worsening

arthritis in hands and feet. The appellant needs financial assistance as she can no longer work at job which she had to quit in April 2018.

In her Self-Report, the appellant writes that she is able to look after herself on a day to day basis at home.

Assistance Required

In the MR under; "Does the applicant require any prostheses or aids for her impairment?" The GP indicates, "No".

The AR indicates that help is provided by family.

Notice of Appeal

In her Notice of Appeal dated November 2, 2018, the appellant writes that she is having a hard time understanding how she is expected to hold down any type of job when she is unable to work on her feet or with her hands for any prolonged period of time. The appellant states that she works in retail which requires 100% on her job on her feet and is unable to work 32-40 hours a week. She states that she can barely work 2-4 hour shifts and not working is not her choice.

Hearing

Appellant

The appellant testified that she found the appeal process and documentation overwhelming and that she didn't have a social worker to help her. She stated that her doctor set her up to fail and that he told her she wouldn't qualify for PWD designation. She states that she has been clean for 8 years and had just got back into the work force. Working has given her a new lease on life and something she was proud about which doesn't come easy to her.

The appellant's former boss and friend indicated that she has known the appellant for about 3 years and while noting an age difference stated that the job was physically demanding and that she noticed the progression of arthritis when the appellant started using her arms instead of hands to lift units of clothing. It was further stated that the appellant was a good employee who always did her best and never complained and who wants to continue to work.

In response to a questions by the panel, the appellant indicated that she had the same doctor for 30 years and that after being disappointed by her doctor who is about to retire, she had gone to a walk in clinic where the doctor ordered x-rays. The appellant also indicated that as a result of her worsening physical impairments, her anxiety and depression are being effected.

Ministry

The ministry stood by their reconsideration decision. The ministry recognized that the appellant had arthritic issues but stated that inconsistencies of the appellant's condition between the report prepared by the appellants GP and that of the assessor report prepared by the RN prevented the ministry to conclude that the appellant had met the criteria laid out in legislation and the Act.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reconsideration decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry found that the appellant met the age requirement and that the appellant's impairment is likely to continue for at least two years.

However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- 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 following Sections of the EAPWDA apply to this appeal:

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 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 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.

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided is evidence of a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. "Impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions and their duration on physical functioning, mental functioning, ability to perform DLA, and help required with DLA.

Severity of Physical Impairment

The appellant's position is that she is not able to stand or work more than 3-4 hours without being in pain. She states that any work or activity, typing, writing etc. is pretty much the same.

The ministry notes that the GP reports that the appellant is able to walk up to 4 blocks although the RPN states that she is restricted to walking up to 3 blocks. Regardless, the ministry determines that the ability to walk up to 3 blocks is not considered indicative of a severe physical impairment. The ministry also notes that the RPN indicates that the appellant requires "periodic to continuous" assistance from another person with climbing stairs while the GP indicates that the appellant can climb 5+ stairs unaided. The ministry further notes the ability to stand for up to 2 hours as indicated by the RPN is not indicative of a severe impairment of physical functioning. It is also noted that although the RPN indicates that the appellant requires continuous assistance with lifting and carrying/holding, she does not describe how much longer than typical the appellant takes with walking outdoors, climbing stairs, lifting or carrying/holding.

Based on the assessments provided by the GP and the RPN as well as the appellant's self-report, the ministry has determined that a severe impairment of physical functioning has not been established.

The legislation requires that the minister be "satisfied" that the person's impairment is severe. The panel therefore finds that the ministry was reasonable in relying on the independent and professional opinion of the GP who has known the appellant for over 30 years.

The panel notes that for the purposes of determining eligibility for PWD designation, an applicant's employability or ability to work is not taken into consideration. While the panel acknowledges that the appellant has some physical limitations, she is also reported to be able to walk up to 3 blocks, climb 5 stairs with "periodic to continuous" assistance from another person and stand for up to 2 hours. The panel finds that the appellant's physical limitations as described by both the appellant's GP and the RPN are not of a severe nature as required by the legislation. The

panel concludes that the ministry was reasonable to determine that the assessments provided by the prescribed professionals of current physical functioning do not reflect a severe physical impairment. Therefore, the panel finds that the ministry was reasonable in its determination that the evidence does not establish a finding that the appellant suffers from a severe physical impairment pursuant to Section 2(2) of the EAPWDA.

Severity of Mental Impairment

The appellant's position is not being able to do what she is used to doing is having a negative toll on her depression and anxiety.

The ministry notes that the GP indicates that the appellant's anxiety and depression cause some impairment of attention and short-term memory without describing the severity of impacts to memory. The GP also indicates significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and attention/sustained concentration. The RPN reports that the appellant has major or moderate impacts to cognitive and emotional functioning in the areas of impulse control, motor activity, memory and motivation while the GP does not indicate significant deficits to these areas.

Based on the assessments provided by the GP and the RPN as well as the appellant's self-report, the ministry has determined that a severe impairment of mental functioning has not been established.

The panel notes that for DLA that are specific to a mental impairment under Section 2(1)(b) of the EAPWDR, such as making decisions about personal activities, care or finances and relating to, communicating or interacting with others, the medical and assessor's reports do not mention any restrictions in terms of decision making and social functioning. Subsequently, the panel does not have a clear understanding from the information provided as to how the appellant's medical conditions would constitute a severe mental impairment that impacts her daily cognitive and emotional functioning given that she is independent in almost all of her daily living activities. The panel therefore finds that the ministry reasonably determined that the assessments provided by the prescribed professionals do not establish a severe mental impairment pursuant to Section 2(2) of the EAPWDA.

Restrictions in the Ability to Perform DLA

The appellant's position is she requires constant assistance for basic housekeeping, shopping and lifting as well carrying and holding items due to the arthritis in her hands. She argues that her osteoarthritis is getting worse and most activities cause her pain.

The ministry notes that the appellant's GP reports that she is independent with the majority of listed areas of daily living activities while the RPN indicates restrictions to areas of personal care, basic housekeeping, shopping, meals, paying rent and bills and medications. The ministry also notes that the RPN does not describe the frequency of periodic assistance needed with meals or how much longer than typical the appellant takes with grooming. Although the appellant's GP indicates that she is not restricted with social functioning the RPN indicates that continuous support is required in the area of being able to secure assistance from others because the appellant feels useless.

Based on the assessments provided by the GP and the RPN as well as the appellant's self-report, the ministry finds that there is not enough evidence to confirm that the appellant has a severe impairment that directly and significantly restricts her ability to perform the daily living activities continuously or periodically for extended periods. Therefore, the legislative criteria have not been met.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation under Section 2(2)(b)(i) of the EAPWDA requires the minister to assess severity considering the opinion of a prescribed professional, in this case both the GP and RPN as to direct and significant restrictions. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as

assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

As the appellant is reported as able to independently manage the majority of tasks of daily living activities, and has admitted in her self-report that she is able to look after herself on a day to day basis at home; the panel finds it difficult to assess whether the appellant's condition directly and significantly restricts her ability.

While the panel acknowledges that the appellant has osteoarthritis in her hands and feet pain, without more information from a medical professional on the frequency, duration, and nature of help required, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established.

The panel finds that the ministry reasonably determined that there is insufficient evidence from the prescribed professionals to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods. Therefore, the panel finds that that the requirement pursuant to Section 2(2)(b)(i) of the EAPWDA was not established by the evidence.

Help Required

The appellant's position is that help is provided by family.

The ministry has determined that as it has not been established that DLA are significantly restricted continuously or periodically for extended periods, it therefore cannot be determined that significant help is required from other persons.

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. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

Based on the evidence, the panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, 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.

Conclusion

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 that this was a reasonable application of the legislation, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Lynn Twardosky

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/NOV/28

PRINT NAME

Lowell Johnson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/NOV/28

PRINT NAME

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/NOV/28