



PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 18 March 2019, 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;
- She has a severe mental or physical impairment; and
- Her impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years.

The ministry further determined that the appellant had not demonstrated that:

- Her 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

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

Evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated 4 December 2018, completed by a general practitioner (GP) who indicates that the appellant has been his patient since May 2017 and he has seen her 2-10 times in the past 12 months.
- An Assessor Report (AR) dated 6 December 2018, completed by the same GP.
- A Self Report (SR) dated 28 March 2018, completed and signed by the appellant.

The panel will first summarize the evidence from the PWD Application as it relates to the two PWD criteria at issue in this appeal (NOTE: italicized text indicates written commentary).

Ability to perform Daily Living Activities (DLA)

MR:

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

The GP has not completed Part E – Daily Living Activities in the MR in accordance with the instructions provided as he has completed the Assessor Report.

AR:

The GP indicates that the appellant is independent with:

- The personal care tasks of feeding herself and regulating diet;
- The shopping tasks of readings labels, making appropriate choices, and paying for purchases;
- The meals task of safe storage of food;
- The pay rent and bills tasks of budgeting, banking and bill payment;
- The medications tasks of filling/refilling prescriptions, taking as directed and safe handling and storage; and
- The transportation task of using transit schedules and arranging transportation.

The GP indicates that the appellant takes significantly longer with:

- The personal care tasks of dressing, grooming, bathing, toileting, transfers in/out of bed and on/off chair;
- The basic housekeeping tasks of laundry and basic housekeeping;
- The shopping tasks of going to and from stores and carrying purchases home;
- The meals task of meal planning, food preparation and cooking; and
- The transportation task of getting in/out of a vehicle and using public transit.

SR:

The appellant reports that she is unable to lift anything over 5 lbs. and can only stand for short periods to prepare a meal or do dishes. She indicates that it takes a lot longer to get around and she would never be able to walk from her home to catch a bus. She states that it takes her a lot longer to do everything, even to dress, because she has a limited range and cannot lift her arms above her head for long.

Section 2(1)(b) of the EAPWDR

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

Make decisions about personal activities, care or finances

AR:

The GP indicates that the appellant is independent with:

- The personal care tasks of feeding herself and regulating diet;
- The shopping tasks of readings labels, making appropriate choices, and paying for purchases;
- The meals task of safe storage of food;
- The pay rent and bills tasks of budgeting, banking and bill payment;
- The medications tasks of filling/refilling prescriptions, taking as directed and safe handling and storage; and
- And the transportation task of using transit schedules and arranging transportation.

The GP reports that the appellant is independent with making appropriate social decisions (*Lives with family. Socializes with her family predominantly*).

Relate to, communicate or interact with others effectively

MR:

The GP indicates that the appellant has no difficulties with communication.

AR:

The GP assesses the appellant's ability to communicate as good in all listed areas (reading, writing, hearing and speaking).

In assessing social functioning, the GP indicates that the appellant is independent with developing and maintaining relationships (*Restricted social circle*), interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others. The GP indicates that the appellant has good functioning in her immediate social networks and marginal functioning in her extended social networks.

Help required

MR:

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

AR:

The GP indicates that the appellant receives assistance from family.

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

2. Appended documents

Documents included with the PWD application consisted of a 2 page Medical Imaging Report date 7 December 2018 indicating the presence of thoracic degenerative disc disease, transitional vertebra, and bilateral marked osteoarthritis.

3. Request for Reconsideration

The appellant submitted a signed Request for Reconsideration dated 06 March 2019, which included a 4-page submission from the appellant detailing the difficulties she experiences with DLA and the assistance she requires and receives from family members with her DLA on a daily basis.

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

1. Notice of Appeal

In the Notice of Appeal dated 22 March 2019, the following reasons for appeal are provided: *I agree with the decision because I am disabled and need the help of the financial assistance as I am disabled to work. I believe that they did not really consider the new documents I put in on March 6th regarding all the help I need from my*

family to function on a day-to-day basis.

2. **Appeal Documents**

Included with the Notice of Appeal is a letter from the GP dated 25 March 2019, acknowledging how the appellant's disabilities affect her daily living. The GP indicates that the appellant relies on her family for assistance with DLA, including vacuuming, sweeping/mopping, shopping for groceries and personal items, carrying her laundry up and down the stairs, and meal making (opening cans, cutting/chopping/peeling food, lifting pots/pans to strain liquids, stirring). The GP provides the opinion that the appellant's ability to perform daily functions is "strongly impaired" and she "relies heavily on family members to get even the basic tasks done".

3. **Appeal Submissions**

At the hearing the appellant argued that she believes that she does meet the test for PWD designation. She argued that the GP did indicate in the original application that she does receive assistance from family with DLA and her reconsideration submission had listed all of the ways that she does need help every single day. The appellant submitted that the letter she has supplied from her doctor on appeal itemizes the help she needs from family on a day-to-day basis for housekeeping cooking, cleaning and other tasks. The appellant reported that she lives with 6 family members and does what she can but also that she is in constant pain and receives assistance multiple times everyday with various aspects of DLA. She stated that she does not do any sweeping/mopping, vacuuming or shopping and requires help with many other tasks. For instance, she reported that she is capable of dressing herself including putting on a shirt and socks but she only dresses on her own when there is no one available to help her because it is extremely difficult and takes a long time. She described the way that she must lay her shirt down on the bed and "slide" into and that she has to sit and lift her legs manually to get socks on alone. She similarly stated that she doesn't comb her hair on her own if someone is available to help her because her ability to lift her arms overhead is limited and comes with significant pain. She stated that while she is capable of driving herself to appointments, it takes much longer (15-20 minutes) to get down the stairs and into the car so that she can do so. The appellant also argued that she is no longer capable of working. She stated that she worked for as long as she could and cannot function any longer.

The appellant stated that in addition to help from family, she would benefit from a cane and had discussed this with her doctor. The appellant stated that she currently holds on to furniture as she moves around indoors to prevent herself from falling and the reason she doesn't already have a cane is that she cannot afford to purchase one.

The ministry did not attend the hearing and relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal consists of argument, which does not require an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that the GP's 25 March letter is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because it speaks to the appellant's ability to perform DLA and is in support of information and records before the ministry at reconsideration.

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 two 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'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 significant help or supervision of another person 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.

In order to qualify for PWD designation, an individual must establish that they meet five criteria set out in the EAPWDA. All five of the following legislative criteria must be met:

1. The individual is 18 years or older;
2. The minister is satisfied that the individual has a severe mental or physical impairment;
3. The impairment, in the opinion of a medical practitioner or nurse practitioner is expected to continue for two years or more;
4. The impairment, in the opinion of a prescribed professional, directly and significantly restricts the persons ability to perform daily living activities (DLA) continuously or periodically for extended periods; and
5. The as a result of the restrictions, the individual requires help to perform DLA.

In this appeal, the ministry has accepted that the appellant meets the first three legislated criteria. As a result, **only** criterion **4** and criterion **5** are at issue in this appeal.

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, in this case the GP. 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. The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be due to a severe mental or physical impairment, which has been established.

The ministry was not satisfied that the appellant's severe impairment, 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 noted that the GP's assessments indicated that the appellant takes longer with a number of activities of daily living but does not explain how much longer. The ministry found that it was unable to establish that the appellant is restricted to a significant degree in her ability to perform her daily living activities. The ministry also found that the GP did not indicate that the appellant required assistance from another person or the use of an assistive device. With respect to social functioning, the ministry noted that the GP indicates that the appellant is independently able to manage all social functioning activities, has good functioning in her immediate social circle and no support/supervision has been identified as necessary to help the appellant with social functioning or support her in the community. The ministry concluded that the information provided was not enough to confirm that a severe mental or physical impairment significantly restricts the appellant's 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 not reasonable. In assessing the reasonableness of the ministry's conclusion on this criterion, the panel must assess reasonableness in light of all of the admissible evidence available to the panel on appeal and

not only the information that was before the ministry at reconsideration. The panel notes that the appellant's reconsideration submission does contain information relating to restrictions to DLA due to her impairments and also speaks to the assistance she receives from family members in order to accomplish her DLA. The panel notes that the legislation specifies that direct and significant restrictions to DLA must be in the opinion of a prescribed professional. The panel finds that the information provided by the appellant at reconsideration is not in the opinion of a prescribed professional. However, on appeal the appellant submitted a letter from her GP, which the panel has determined to be admissible. In this letter, the GP confirms that the appellant is completely unable to perform several DLA tasks, including vacuuming, sweeping/mopping, and daily shopping; and needs assistance from others to complete these tasks. In addition, the GP indicates that the appellant is unable to complete laundry and meal preparation tasks without the assistance of another person. The GP provides his opinion that the appellant's "daily living functions are strongly impaired and she relies heavily on her family members to get even the basic tasks done." In light of this information from the GP, which clearly amounts to the "opinion of a prescribed professional" as required by the legislation, the panel concludes that the ministry's determination that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods is unreasonable.

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 the appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required. While the information at reconsideration, including the original PWD application and the appellant's reconsideration submission, demonstrates that the appellant does receive assistance from family, the ministry made its conclusion on this criterion on the basis that direct and significant restrictions in the appellant's ability to perform DLA had not been established. Additional information available on appeal, including the GP's letter and the appellant's testimony, also indicates that the appellant requires help from other persons, namely family members, in the performance of DLA. Given the panel's conclusion that the minister's determination regarding direct and significant restrictions to DLA is unreasonable, and in light of the available evidence, the panel finds that the reconsideration decision is also unreasonable with respect to the conclusion 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, is not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.

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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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/04/12

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/12

PRINT NAME

Marlene Russo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/12