

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 20, 2023, which determined the appellant is not eligible for the Persons with Disabilities (PWD) designation, per Sections 2 (2) and (3) of the Employment and Assistance for Persons with Disabilities Act (EAPWD Act). The ministry determined that the appellant has not met the requirement that a medical practitioner or nurse practitioner confirm that the appellant's impairment is likely to continue for at least 2 years.

**Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act – Sections 2 (2) and 3

## **Part E – Summary of Facts**

### Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

- The appellant submitted a Persons with Disabilities application on November 21, 2022. In this application, the appellant's family doctor noted that her impairment was not likely to continue for at least two years. The doctor commented: "She is being treated for hypocalcemia + hypothyroidism. Labs being monitored. Plan is to treat medically such that her impairment is improved."
- The ministry denied the appellant's request on December 20, 2022.
- The appellant submitted a Request for Reconsideration with an extension request to January 20, 2023, to submit additional information.
- No new information was received by the Ministry.
- On January 20, 2023, the ministry completed its review of the appellant's Request for Reconsideration. In its decision the ministry determined that while the appellant met four out of five of the listed criteria for designation as a Person with Disabilities, she did not meet the duration requirement.

### Additional Evidence Provided on Appeal

In the appellant's Notice of Appeal (NOA), filed on January 30, 2023, the appellant explained that her cancer treatment has not been entirely successful. She still has cancer that severely impairs her, and now has additional related physical and mental health conditions. The appellant explained that her family doctor submitted his report to the ministry before the severity of her medical situation became fully known.

The appellant noted that she has been back to see her family doctor since the ministry's decision that she is not eligible to be designated as a Person with Disabilities (PWD). The doctor told the appellant that there is no place in the ministry's application paperwork where the doctor can specifically confirm that the appellant's impairment is likely to continue for at least 2 years.

The appellant submitted additional information in a cover sheet and letter faxed to the Tribunal on February 14, 2023. The enclosed certificate of health status was written by the appellant's family doctor on February 6, 2023. This letter includes a brief description of the appellant's current health situation including the failure of radiation treatments to date, and the possible need to repeat this treatment. In addition, the appellant is being followed by an endocrinologist for hyperthyroidism. The doctor also observes that the appellant feels anxious, hopeless, and overwhelmed, and is under treatment for anxiety and depression, including fatigue, malaise, sleep disorder, anhedonia, and cognitive impairment, all of which are having a major impact on her ability to function. The family doctor concludes that the appellant "remains unable to work for the foreseeable future as a result of her combined maladies."

**Part F – Reasons for Panel Decision**

The issue on appeal is the reasonableness of the ministry's reconsideration decision that the appellant is not eligible for the Persons with Disabilities (PWD) designation, per Sections 2 (2) and (3) of the Employment and Assistance for Persons with Disabilities Act (EAPWD Act). Specifically, was the ministry reasonable in its determination that the doctor did not confirm that the appellant's impairment is likely to continue for two years or more.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Appellant Position

At the hearing, the appellant provided detailed information to explain the nature and severity of her health issues. The appellant noted that she has already had cancer for three years. The appellant's endocrinologist said that her body's lack of full response to treatment for this type of cancer is rare, that this is going to be a long journey and she may need treatment for the rest of her life. The endocrinologist noted that further surgery may not be an option and is working to figure out the next possible course of action for treatment. The appellant also asserted that the letter written by her family doctor on February 6, 2023, and sent to the Tribunal on February 14, further clarifies that her health situation is going to last for the foreseeable future.

Ministry Position

At the hearing, the ministry's position did not change. The ministry reiterated that the relevant legislation is *specific* in requiring that a medical practitioner or nurse practitioner provide an opinion that the likely expected duration of the appellant's illness is for at least 2 years. The ministry was not satisfied that the new information provided by the doctor, specifically the wording that the appellant's health situation is going to continue "for the foreseeable future," clarifies that the appellant's impairment is likely to continue for at least 2 years.

Panel Decision

Section 2 of the EAPWD Act states that the minister may designate an individual as a person with disabilities if the minister is satisfied that:

- the person has a severe mental or physical impairment that
- in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- directly and significantly restricts the person's ability to perform daily living activities, and
- as a result of those restrictions, the person requires help to perform those activities.

In its reconsideration decision, the ministry agreed that the appellant met all but one of the legislated requirements. The panel will not comment further on these requirements.

The ministry did not agree that the appellant met the legislated requirement that a medical practitioner or nurse practitioner confirm that the appellant's impairment is likely to last for at least 2 years.

The panel notes that in the PWD application, the doctor indicated that the appellant's impairment is not likely to continue for two years and that the plan was for medical treatment to result in improvement. The February 6, 2023 letter from the appellant's family doctor specifically notes that the appellant "remains unable to work in the foreseeable future as the result of her combined maladies." The letter also states the appellant is under treatment for the maladies which are having a major impact on her ability to function. At the hearing the appellant stated that the treatment is having some benefit for her mental health and that her medication is currently being adjusted.

The panel notes that inability to work is not a legislated consideration in an application for designation as a Person with Disabilities (PWD.)

The Merriam Webster dictionary defines the term "for the foreseeable future" as "at a time that is not long from now: soon." This definition does not suggest a lengthy duration. The panel therefore finds neither the doctor's original submission or the February 6, 2023 certificate of health status meets the Act's specific requirement that a medical practitioner or nurse practitioner provide an opinion that the appellant's impairment will continue for at least two years.

Therefore, based on all the evidence, the panel finds the ministry was reasonable in its determination that the doctor did not confirm that the appellant's impairment is likely to continue for two years or more and that the appellant is not eligible for the Persons with Disabilities (PWD) designation.

### Conclusion

The panel recognizes the severity of the appellant's health situation and empathizes greatly with her situation.

In conclusion, the panel finds the ministry decision that determined the appellant is not eligible for the Persons with Disabilities (PWD) designation, per Section 2 (2)(a) of the Employment and Assistance for Persons with Disabilities Act (EAPWD Act), was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful on appeal.

## Relevant Legislation

### EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

#### *Persons with disabilities*

2 (1) In this section:

"**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.

APPEAL NUMBER 2023-0031

**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)

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

**Part H – Signatures**

Print Name  
Melissa McLean

Signature of Chair

Date (Year/Month/Day)  
2023/02/28

Print Name  
Jane Nielsen

Signature of Member

Date (Year/Month/Day)  
2023/02/28

Print Name  
Don Stedeford

Signature of Member

Date (Year/Month/Day)  
2023/02/28