

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 10, 2010 which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act and section 2 of the Employment and Assistance for Persons with Disabilities Regulation for designation as a person with disabilities (PWD). The ministry determined that the appellant met the age requirement and was satisfied that she had a severe physical impairment, which in the opinion of a medical practitioner is likely to continue for at least 2 years. However, the ministry was not satisfied that, in the opinion of a prescribed professional, the appellant's impairment directly and significantly restricted her ability to perform daily living activities (DLA) either continuously or periodically for extended periods and that as a result of those restrictions she required 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

The evidence before the ministry at reconsideration was comprised of a PWD application (Self-Report (SR), Physician Report (PR), and Assessor Report (AR)) and the information provided by the appellant in the Request for Reconsideration.

In the PR, the appellant is diagnosed with rheumatoid arthritis which affects the appellant's mobility. Physical functional skills are reported as being able to walk less than 1 block unaided, climb 2 to 5 steps unaided, lift under 5 lbs, and remain seated without limitation. In the AR, completed by the same physician who completed the PR, the appellant is reported to independently manage all aspects of personal care, meals, paying rent and bills, and medications as well as 1 of 2 aspects of basic housekeeping (laundry), 4 of 5 aspects of shopping, and 2 of 3 aspects of transportation. Periodic assistance is required for the 1 remaining aspect of basic housekeeping, (basic housekeeping), shopping (carrying purchases home), and transportation (using public transit). No narrative is provided.

In her SR and information provided in the Request for Reconsideration, the appellant writes that due to her arthritis she is unable to grocery shop and because she cannot stand for long, her landlord makes lunch and dinner for her everyday. The appellant writes that she cannot drive due to the "daze" caused by her arthritis medication. She uses a cane to relieve the swelling in her knee and ankle and requires knee replacement surgery.

On appeal, the appellant submitted a December 22, 2010 letter from the physician who completed the PR and AR in which the physician writes that the appellant "requires assistance most of the time with basic housekeeping and all of the time with transport and carrying purchases home." The physician adds that the appellant's condition is chronic and her significant restrictions are also chronic. It is the physician's opinion that the appellant's impairment directly and significantly restricts some activities continuously and others frequently for extended periods. For example, the appellant is unable to grasp a knife well enough to cut vegetables or make dough for rotis. She is unable to vacuum, although she could do a little bit of dusting. She is incapable of carrying groceries home. The appellant requires help from friends or family for these tasks.

The appellant also submitted a letter dated December 18, 2010 in which she describes her limitations and need for assistance as well as a letter of the same date written by her landlords. In her letter, the appellant writes that she requires continuous assistance from another person with housework, meal preparation and transportation and that she requires the continuous assistance of a cane for mobility inside and outside her home. She writes that she is unable to vacuum, wash the tub, mop/sweep the floor, stand to make meals, and is unable to get a driver's license due to feeling hazy as a result of medication. In their letter, the appellant's landlords write that they grocery shop, vacuum, sweep, and make meals for the appellant and also drive her to her doctors' appointments.

The panel admitted the letters from the appellant's physician, the appellant, and her landlords as new evidence under section 22(4) of the Employment and Assistance Act as they were found to be in support of the information and records before the ministry at reconsideration.

The ministry had an opportunity to provide evidence and make a submission respecting the additional evidence submitted to the Tribunal by the appellant but declined to do so preferring to rely on the information provided in its Reconsideration Summary.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict her ability to perform DLA either continuously or periodically for extended periods and that the appellant does not require help to perform DLA as a result of those restrictions. The ministry determined that the age requirement had been met and that the appellant has a severe physical impairment which is likely to continue for 2 years or more.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

Regarding the legislative requirement that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, the appellant's position is that her severe physical impairment continuously and significantly restricts her ability to perform basic housekeeping, meal preparation, carrying groceries, and transportation. The ministry's position is that the AR has indicated that the appellant is able to complete 25 of 28 aspects of DLA independently. The ministry does acknowledge that the AR indicates that appellant requires periodic assistance with basic housekeeping, carrying purchases home, and using public transportation but notes that no narrative to explain the frequency, duration and extent of assistance required to complete these tasks is provided.

In assessing the evidence of the prescribed professional, the appellant's general practitioner, the panel determined that greater weight should be placed on the evidence in the December 22, 2010 letter over that in the AR for the following reasons: (i) the December 22, 2010 letter is the most recent evidence of the appellant's physician; (ii) the restrictions described in the letter are supported by the physician's evidence respecting the appellant's physical functional skills including the ability to walk unaided less than 1 block and lift under 5 lbs; (iii) the description of DLA restrictions in the December 22, 2010 letter is consistent with the evidence of the appellant and her landlords. The panel finds that the new evidence of the appellant's general practitioner is that appellant's impairment directly and significantly restricts some activities continuously and others frequently for extended periods of time. Specifically, the physician writes that the appellant requires assistance most of the time with basic housekeeping, as she is capable of doing a little bit of dusting but is unable to vacuum, and all of the time with transportation and carrying purchases home. Additionally, it is the physician's evidence that the appellant is unable to grasp a knife well enough to cut vegetables and requires assistance with food preparation. In view of the evidence in the physician's December 22, 2010 letter respecting the continuous restrictions the appellant's physical impairment has on her ability to manage

transportation, basic housekeeping, carrying purchases home, and meal preparation as well as the physician's evidence of the appellant's restrictions moving about outdoors, the panel finds that the ministry unreasonably determined that a direct and significant continuous restriction, in the opinion of a prescribed professional, was not established. Accordingly, the panel finds that the ministry did not reasonably determine that the criteria of section 2(2)(b)(i) of the EAPWDA was not met.

Regarding the criteria set out in legislation respecting the appellant's need for assistance with DLA, the appellant's position is that, as a result of having a severe physical impairment, her ability to perform DLA is significantly impacted most or all of the time and that, as a result, she requires significant help from other people to perform DLA. For example, she reports that she is unable to stand long enough to prepare her own meals and as a result, her landlord has been preparing them for her on a daily basis. Side effects from her medication have prevented her from being able to drive and she relies on others to take her to doctors appointments, pick up her prescriptions and to do her grocery shopping. The ministry's position is the appellant does not have a severe physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA and, as such, it could not be determined that the appellant requires significant help from another person.

In assessing the evidence of the prescribed professional, the panel has again placed greater weight on the information provided by the appellant's physician in the December 22, 2010 letter over that in the AR for the previously stated reasons. The panel finds that the most recent evidence of the physician identifies the need for the assistance of another person most of the time with basic housekeeping, all of the time with transportation and carrying purchases home, as well as ongoing assistance with meal preparation. In light of the physician's evidence respecting the need for assistance most or all of the time with basic housekeeping, transportation, meals, and aspects of shopping, the panel finds that the ministry unreasonably determined that the significant help of another person is required to perform DLA which are directly and significantly restricted. Therefore, the panel finds that the ministry unreasonably determined that the criterion of section 2(2)(b)(ii) of the EAPWDA was not met.

The panel finds that the ministry's reconsideration decision denying the appellant's application for PWD status was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision.