

PART C – Decision under Appeal

In a reconsideration decision dated 29 March 2011, the Ministry denied the Appellant a Person with Disabilities (PWD) designation because they concluded she did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that her impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because they determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, the impairment in the opinion of a prescribed professional did not directly and significantly restrict her ability to perform daily living activities (dla) either continuously or periodically for extended periods and she did not require an assistive device or significant help or supervision of another person to perform her 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

Preliminary Matters: The Appellant submitted the following to the Ministry and the tribunal on April 18, 2011 as evidence :

- a letter from the Ministry dated February 1, 2011,
- 14 pages of notes from the Appellant; dated May 6, 2011(2 pages), March 2, 2011, March 17, 2011, June 28, 2009, April 1, 2011(2 page medical request with note), March 21, 2011, February 2, 2011(5 pages).

At the hearing the Ministry did not object to this new evidence and confirmed the letter dated February 1, 2011 approving PWD designation was sent to the Appellant in error. The Panel found Appellant's notes supported the evidence that was before the Ministry at the time of the reconsideration decision and admitted the notes under EAA, Section 22(4)(b).

At the hearing, the Appellant submitted 14 pages of evidence with her submission. The Ministry did not object to the submission of the evidence. The Appellant argued the evidence supported her ongoing struggle to get the medical support she requires. Upon review of the notes, the Panel found the evidence included letters and documents dated five or more years previous to the issue at hand and did not contain any relevant evidence to support that which was before the Ministry at the time of the reconsideration decision. The Panel did not admit the 14 pages of evidence submitted at the hearing.

The evidence before the Ministry at the time of the reconsideration decision included:

- a PWD designation application,
- 4 pages of handwritten notes and 2 pages of diagrams with notes from the Appellant (undated),
- a 2 page report from a physical medical and rehabilitation clinic dated 14 February 2008,
- a psychiatric consult report dated 13 February 2006,
- a psychological impression report dated 27 April 2006.

In the Appellant's section of the PWD application, the Appellant refers to the 4 pages of notes and 2 pages of diagrams. She describes her difficulties with sitting and lifting, with walking especially on stairs and hills. She explains her attempts at getting better by doing everything her doctors suggest and by doing her own research. The diagrams show the effects of spinal misalignments. She summarizes that after she loses trust in persons or organizations it takes time to get it back. The 14 pages of notes chronicle the Appellant's description of her physical ailments, and how they significantly impact her daily life.

The physician's section of the PWD application is completed by the Appellant's general practitioner (GP). In it, the Appellant is diagnosed with mood disorders (and notes a depression episode 2 years ago), developmental disability (and notes chronic anxiety disorder which is increasing in severity), low IQ based on the 2006 psychological assessment, and degenerative disc disease (and notes chronic pain). The GP comments that the anxiety is by far the most crippling condition. In the health history, the GP states the anxiety disorder is pervasive, longstanding and seemingly progressive. He continues that the anxiety inhibits proper job relations and social functioning and it interferes at a basic level with the Appellant's emotional stability. He notes she is very fragile. He also states her back pain is chronic and is explained by her test results. The GP confirms the impairment will continue more than 2 years. Under functional skills, the GP states the Appellant can walk 4+ blocks,

climb 5+ steps, lift 2-7 kilograms, and remain seated less than 1 hour. He confirms the Appellant has depression and anxiety, organization, motor ability and attention or sustained concentration deficits under cognitive and emotional functions. The GP confirms the Appellant has no prescribed medication or treatment that interferes with her ability to perform d/a. He states the Appellant wears a back pack to relieve the discomfort of lifting and that she uses a stick or cane to help with walking at times. The GP summarizes that the Appellant is struggling to remain independent, to do things for herself even if takes a frustrating long time or presents other difficulties for her.

The assessor's section of the PWD application is completed by the same GP. In it, the GP states the Appellant lives alone. The GP grades the Appellant as good under the ability to communicate. Under mobility and physical ability, the GP states the Appellant is independent in walking indoors and outdoors, climbing stairs, and standing, noting that these activities take the Appellant significantly longer and she uses assistive devices. He states the Appellant needs continuous assistance with lifting, carrying and holding.

Under cognitive and emotional functioning, the GP reports minimal impact on consciousness and impulse control; moderate impact in bodily functions, attention/ concentration, executive, memory; and major impact in emotion and motor activity. He notes the Appellant spends a lot of time compensating for back pain and remains quite socially isolated.

The GP rates the Appellant as independent in all aspects of d/a. He notes she takes significantly longer to dress and groom, to make transfers in and out of bed or chairs, to do laundry, basic housekeeping and carrying purchases home. The GP notes the Appellant has difficulty doing everything herself on a day to day basis. He states the Appellant also takes significantly longer in food preparation and cooking, that she uses door frames when getting in and out of a vehicle and a back brace as an assistive device when using public transit.

Under social functioning, the GP states the Appellant requires no support but notes she does isolate herself significantly. He describes her immediate social network as very disruptive functioning and her extended social networks as marginally functioning. He notes she requires ongoing contact with human resources and medical practitioners. The GP states the Appellant does not readily access assistance from others and she would do well in a therapy group but has declined this help.

At the hearing, the Appellant stated she can walk but uses a walking stick all the time. She says she takes significantly longer to do her d/a. She states she does not take prescribed medication for pain because of side effects, although her physician has encouraged her to do so. She says she volunteers where she is able and brought a letter of support from a woman she has done both yard and house work for. The Appellant disagreed with the GP's diagnosis that anxiety is her most crippling condition and said it is her back and leg pain that constricts her d/a the most.

At the hearing the Ministry reviewed the criteria for PWD designation and noted the applicable legislation. The Ministry confirmed the Appellant is currently receiving income assistance and is designated as a person with persistent multiple barriers to employment.

From the information presented, the Panel finds:

- the Appellant is a recipient of income assistance living with as a person with persistent multiple barriers to employment designation,

- the Appellant lives alone,
- the Appellant is diagnosed by a medical practitioner with an impairment that will continue for more than 2 years,
- the Appellant is diagnosed by a GP with depression as a mood disorder, chronic anxiety as a developmental disability, low IQ as an other mental disorder, and degenerative disc disease causing chronic pain; with anxiety being the most crippling condition.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant a PWD designation based on the Appellant not meeting 3 of the 5 necessary statutory requirements for PWD designation as defined in EAPWDA, Section 2 and EAPWDR, Section 2. The Ministry found the information submitted did not establish that the Appellant had a severe mental or physical impairment, the impairment in the opinion of a prescribed professional does not directly and significantly restrict her ability to perform daily living activities (dla) either continuously or periodically for extended periods and she does not require an assistive device or significant help or supervision of another person to perform her dla.

The criteria for PWD designation is set out in EAPWDA, Section 2 as follows:

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;

"health professional" repealed

"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 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.*

(4) The minister may rescind a designation under subsection (2)

The definition of daily living activities is set out in ERAPWDR, Section 2 as follows:

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,*
- (b) registered psychologist,*
- (c) registered nurse or registered psychiatric nurse,*
- (d) occupational therapist,*
- (e) physical therapist,*

- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

The Minister argues a severe physical impairment has not been established because the Appellant is able to walk 4+ blocks, to climb 5+ steps, to lift 5 - 15 pounds and can remain seated less than 1 hour. The Ministry reasons the GP indicates the Appellant is able to walk indoors and outdoors, climb stairs and stand independently using handrails, a cane or a walking stick for support. The Ministry concludes this information indicates a moderate rather than a severe physical impairment.

The Appellant argues she has chronic pain and struggles to lift, carry, walk up and down stairs or hills and use vehicular transportation.

The GP diagnoses the Appellant with degenerative disc disease reports the Appellant has chronic pain and uses assistive devices such as handrails and a walking stick. The GP describes the Appellant as able to walk the maximum described in the form (4 + blocks) and climb the maximum described (5+ stairs) and lift up to 15 pounds. The GP also states the Appellant is independent in walking indoors and outdoors, climbing stairs, and standing, although taking significantly longer and using assistive devices. Given the opinion from the GP and the Appellant's description that she is independent in her d/a, although she constantly uses a walking stick and struggles with pain, the Panel finds the Ministry made a reasonable determination that a severe physical impairment has not been established. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Ministry argues a severe mental impairment has not been established because they determined the GP had concluded the majority of the Appellant's deficits in cognitive and emotional functions were a minimal to moderate impact and the GP indicated no restrictions to cognitive daily activities were indicated.

The Appellant argues she has been depressed, has trust issues and is isolated but states her anxiety is not her most severe condition.

The GP in the physician's section specified the Appellant has increasing severe chronic anxiety disorder and that it is the Appellant's most crippling condition. The GP notes the Appellant's mental status has impact in various aspects of cognitive and emotional functions. The GP notes a major impact in emotion (as excessive or appropriate anxiety) and motor activity (decreased goal oriented activities), moderate impact in bodily functions, attention/concentration, executive (in organizing and problem solving), memory and other neuropsychological problems, minimal impact in consciousness and impulse control and no impact in insight and judgment, motivation, language or psychotic symptoms. Given the GP also indicates the Appellant as independent in all aspects of social functioning and the Appellant states her anxiety is "not crippling", the Panel finds the Ministry made a reasonable determination that a severe mental impairment has not been established. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Ministry argues the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities because the information from the GP in the assessor's section reports

the Appellant's dla are independent.

The Appellant states her chronic pain causes difficulty in sitting, standing, walking, carrying and lifting and she spends a lot of time flat on her back to compensate for the pain.

In the assessor's section of the PWD application, the GP states the Appellant is independent in all 34 aspects of dla. The GP reports the Appellant takes significantly longer in only 9 of 34 aspects of dla and uses assistive devices in only 4 of 34 aspects of dla. Given the degree of independence described by the prescribed professional, the Panel finds the Ministry made a reasonable determination that the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities and that EAPWDA, Section 2(2) was not met.

The Ministry argues the Appellant does not require significant help to perform dla because it has not been established that the dla are significantly restricted. The Appellant argues she uses a walking stick, must walk back wards up hills at times, and uses handrails for support.

The GP reports the Appellant does not need support in the social aspects of dla but does isolate significantly. The GP does not indicate that assistance to the Appellant is provided by any other people. Given the GP also comments the Appellant does not readily access assistance from others and the Appellant describes herself as independent, the Panel finds the Ministry made a reasonable determination that the Appellant does not require help of another person to perform her dla. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Panel finds the Ministry made a reasonable decision to deny the Appellant a PWD designation because the Appellant did not meet all the legislated requirements in EAPWDA, Section 2 for designation as a PWD. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.