

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 4, 2011 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 for designation as a person with disabilities (PWD).

The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least 2 years and that the appellant has a severe physical and/or mental impairment. However, the ministry was not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, (PP) directly and significantly restricted either continuously or periodically for extended periods and as a result of those restrictions, it could not be determined that she 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

The evidence before the ministry at reconsideration was comprised of: (a) PWD application with a Self Report (SR) dated December 8, 2010, (b) Physician Report (PR) dated December 08, 2010, (c) Assessor Report (AR) dated December 08, 2010 and (d) Request for Reconsideration dated March 3, 2011.

In the SR dated December 6, 2010, the appellant writes that due to favoring her right arm, she now has difficulty with her left arm. Whenever she uses her right arm for light lifting or as an example sweeping the floor, she experiences radiating pain from her right shoulder. She states her symptoms have gotten progressively worse and that she is unable to work and has been getting home care since September 2010.

In the PR dated December 8, 2010, the appellant's medical practitioner of 30 years provides the following diagnosis: depression and anxiety, fibromyalgia type symptoms, rotator cuff tear of the right shoulder with osteoarthritis, chronic obstruction pulmonary disease, emphysema, hypertension and reflux. It is indicated that the applicant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA and that anticipated duration of the medication/treatments is lifelong. Although it is also indicated that the appellant does not require any prostheses or aids for her impairment, a further note includes "handrail on stairs".

In terms of the degree and course of the impairment, the medical practitioner reports "her multiple conditions will continue and worsen". Regarding Functional Skills, the appellant is able to walk 1 to 2 blocks (with frequent rests) and climb 2 to 5 steps unaided (maximum), can lift 5-15 lbs and can remain seated for 1 to 2 hours (moves around to minimize back and muscle pain). Difficulties with communication are noted with the cause being cognitive. Additional comments include anxiety, depression and muscle pain. In terms of cognitive and emotional function, significant deficits are reported under executive, memory, emotional disturbance, motivation, impulse control and attention or sustained concentration.

In the AR dated December 8, 2010 completed by the same medical practitioner, in response to the impact of the appellant's mental or physical impairments on her ability to manage DLA, it is noted as follows: depression, lack of motivation, anxiety, agoraphobia, chronic pain syndrome and poor lung health. The appellant's Ability to Communicate is reported as good in all categories. With regards to Mobility and Physical Ability, the appellant is rated as independent with walking indoors (slow but manages at home) and standing. Periodic assistance from another person as well as taking significantly longer than typical are noted for walking outdoors (slow and needs help, unsteady), climbing stairs (uses assistive device, handrail), lifting, carrying and holding. A comment reports that the appellant lives alone and accepts help with the above noted tasks whenever she can. Cognitive and Emotional Functioning noted major impacts on daily functioning under emotion, impulse control, insight and judgment, motivation and other emotional problems. Moderate impact was reported under bodily functions, attention/concentration, executive and memory. Minimal impact was reported under consciousness and motor activity. No impact indicated for language, psychotic symptoms and other neuropsychological problems. Comments included are as follows: the appellant has feelings of hopelessness following her husband's death, tired, anxiety and dread for eating/preparing foods, poor concentration and motivation, forgetfulness, sluggish due to muscle pain, agoraphobic, so unable to go out without significant panic and friends shop for her.

All DLA under Personal Care were indicated as the appellant independently manages except for regulate diet where it is noted that a neighbour makes sure she eats. Concerning Basic Housekeeping periodic assistance from another person is required under laundry and continuous assistance from another person is noted under basic housekeeping with a single comment that neighbours help. Under Shopping going to and from stores

indicates periodic assistance whereas carrying purchases home requires continuous assistance from another person with a note that the appellant cannot carry. Under Meals, food preparation and cooking are noted to require periodic assistance from another person. All DLA under Pay Rent and Bills, Medications and Transportation are indicated as the appellant independently manages. In regards to Social functioning, it is indicated that periodic support/supervision is required for appropriate social decisions, able to develop and maintain relationships (agoraphobia), interacts appropriately with others and able to secure assistance from others whereas continuous support/supervision is indicated under able to deal appropriately with unexpected demands ( anxious and panic attacks). Marginal functioning is noted with both immediate and extended social networks. In response to describing the support/supervision required which would help to maintain the appellant in the community it is indicated only that "neighbours look in".

The Request for Reconsideration dated March 3, 2011 does not provide any additional details.

In the Notice of Appeal, dated April 21, 2011, the appellant states that due to her mental and physical conditions she is unable to function. She indicates that she is in extreme pain every day. She can't make up a bed due to shoulder pain and there are days when she can barely walk due to a protruding disk in her back. She further indicates that she is awaiting more surgery.

At the hearing, the appellant provided the following testimony; she has short term memory problems, some days, she does not get out of bed, she can wipe crumbs off a counter and do only light duties. She cannot cut a sandwich and friends have to cut her meat. She added that home care stopped after Christmas 2010. In response to a question from the panel, the appellant stated that she was not present when her physician completed the PR and AR on December 8, 2010.

The appellant's advocate stated that the appellant has lost both her husband and a son and has had a series of medical problems as indicated by her physician in his report. He added that she needs help washing her hair and has difficulty getting in and out of the bath. Furthermore, she doesn't answer her phone. He added that she is waiting for medical tests such as an intestinal scope, ct scan for her spine and blood results. He also indicated that because the appellant didn't have a furnace, he supplied her with heaters which were not enough over the winter. For many concerning reasons, the appellant has lived with the advocate and his spouse for about the last 7 months and continues to do so. The appellant goes home about once a week. He added that the appellant sleeps in until 3 or 4 in the afternoon and is not responsible there for any DLA, as they provide full care, such as meals, personal care, shopping and transportation.

The appellant's son testified that his mother became depressed after his brother died and then his father passed away. He stated that his mother lost her job due to an injury and was living alone in the house in which she had placed tin foil on the windows. He testified that the appellant had attempted suicide and remained in intensive care for a week. In response to the ministry's question he added that his mother can't lift anything and doesn't eat properly. He stated that he does all her heavy lifting, mows her lawn and gets firewood while his girlfriend helps with the housework and laundry.

The appellant's friend of 25 years testified that after the appellant's husband's death nearly 5 years ago, he has seen her go from happy go lucky to down hill in the last year. Her weight goes up and down and she can't feed herself. He gave an example when he bought her a blender to make a drink yet she was unable to scoop out the yogurt. He added that he sees her at least once a week, picks up groceries for her and drives her when she needs a lift.

The ministry reviewed their decision and provided no additional evidence at the hearing.

The panel admitted the appellant's reasons for appeal as per the Notice of Appeal dated April 21, 2011 as well as the oral testimony of the appellant, the appellant's son and friend under section 22(4) of the Employment and Assistance Act as being in support of the information and records before the ministry at reconsideration. The ministry did not object to the admission of the new evidence.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a PWD because her DLA are not, in the opinion of a prescribed professional (PP), directly and significantly restricted either continuously or periodically for extended periods and as a result of those restrictions, it could not be determined that she 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 ministry found that the appellant met the age requirement and that her impairment will last for at least 2 years and that the appellant has a severe physical and/or mental impairment.

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.

As noted in the issue under appeal, the panel's findings will be based on the 2 legislative requirements that the ministry had determined were not met in the information and records at reconsideration.

Regarding the degree of restriction that the appellant's impairment has on her ability to perform DLA, the appellant's position is that due to her mental and physical conditions she is unable to function, leaving her reliant on other people. The ministry's position is that the information provided does not establish that DLA are significantly restricted and does not address the frequency, the degree and the duration of the assistance required. The panel finds that the evidence of the PP indicates that the appellant's impairment continuously restricts her ability to perform three (3) aspects of DLA; regulate diet, basic housekeeping and carrying purchases home and periodically restricts her ability to perform four (4) aspects of DLA; laundry, going to and from stores, food preparation and cooking. The panel finds that the evidence of the prescribed professional, the appellant's physician for 30 years is that the appellant is independently able to manage 21/28 aspects of DLA and that he does not provide any explanation as to the degree or the duration for which support/supervision is required. In regards to social functioning, it is indicated that periodic support/supervision is required for appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others and able to secure assistance from others whereas continuous support/supervision is indicated under able to deal appropriately with unexpected demands. Marginal functioning is noted with both immediate and extended social networks. In response to describing the support/supervision required which would help to maintain the appellant in the community it is indicated only that "neighbours look in". The panel also acknowledges that the appellant has been staying with friends for approximately the last 7 months with weekly visits to her home. The panel finds that, while the evidence establishes that the appellant's impairment impacts her ability to perform some DLA and requires both periodic and continuous assistance of unspecified

frequency and duration to complete some aspects of DLA, the ministry reasonably determined that the evidence of the PP does not confirm however, that the appellant's impairment directly and significantly restricts her ability to perform DLA. Therefore, the panel finds that the ministry reasonably determined that section 2(2)(b)(i) of the EAPWDA which requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods of time was not established.

Regarding the reasonableness of the ministry's decision that the appellant does not require 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 panel finds that as the appellant's DLA were found not to be directly or significantly restricted in the opinion of a prescribed professional, the ministry reasonably determined that section 2(2)(b)(ii) of the EAPWDA was not established.

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.