

PART C – Decision under Appeal

In a reconsideration decision dated 24 February 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 legislated in the Employment and Assistance for Persons with Disabilities Act, Section 2 and the 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 in the opinion of a prescribed professional establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict her ability to perform daily living activities (dla) and she does not require significant help or supervision of another person 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 was:

- a completed PWD designation application, dated 16 September 2010,
- a letter dated 24 December 2010 from the Appellant,
- a letter dated 8 March 2011 from a social worker (SW) at a counseling center who has counseled the Appellant for 3 years
- and an 8 page package that included the following:
 - Depression Screening Questionnaire, dated Sept 17, 2010
 - Anxiety Screening questionnaire, dated Sept 17, 2010
 - Ministry Of Housing and Social Development Screening Questionnaires
 - Imaging Consultation Report, dated September 1, 2009
 - Diagnostic Imaging Results, dated April 26, 2010
 - Bone density report, dated April 22, 2010

In the Appellant's section of the PWD application, the Appellant writes she is in constant physical and emotional pain and suffers from extreme anxiety. She states she deals with a number of physical ailments that require constant medication and low levels of activities. She refers to the 8 page document for further details. In the screening questionnaire, the Appellant scores 23 out of 27 (severe depression) and in the anxiety screening questionnaire the Appellant scores 17 out of 21 (severe anxiety). The Appellant makes further comments on the impact of these impairments on her life. The 8 pages also include a list from the Appellant of her physical problems, and image consultant reports. In the letter dated 24 December 2010, the Appellant describes her battles with anxiety, depression and panic attacks as well as her physical problems including a degenerative disc in her neck, bladder infections, bursitis and osteoporosis.

The physician's section of the PWD application is completed by a medical practitioner (MP). In it, the Appellant is diagnosed with depression, generalized anxiety disorder, panic attacks, chronic knee pain, severe degenerative disc disease and chronic neck pain. In the health history, the MP states the Appellant's chronic depression and anxiety disorders have a significant impact on the ability to perform her basis dla. The MP notes "her lack of emotional stability has a significant impact on her ability to perform basic daily living activities." Her "fluctuating happy moods to extreme anxiety with panic attacks". .. makes the patient very unreliable on a day to day bases...and even causing restriction in her ability to perform necessary daily living activities." She also finishes her reference to the Appellant's physical problems with "this all resulting in increased pain, physical disability and inability to cope emotionally."

The MP also states her chronic neck and upper back pain results in physical disability and an inability to cope emotionally. The MP states the Appellant has no prescription or treatment that interferes with her ability to perform dla however she does confirm the Appellant's impairment will continue for 2 or more years. Under functional skills, the MP reports the Appellant can walk unaided 2 -4 blocks, climb unaided 5+ steps, is limited to lifting 2 -7 kg. and can remain seated 1-2 hours. The MP reports significant deficits in 7 out of 12 cognitive and emotional functions. Under dla the MP states the impairment directly restricts the Appellant's ability to perform dla. Specifically, the MP states meal preparation, basic housework, and daily shopping are periodically restricted. The MP further explains that when the Appellant's anxiety levels increases it causes disruption in her mental state and functioning. Under assistance needed the MP notes the Appellant 's daughter periodically helps and

the Appellant needs ongoing frequent individual counseling in order to cope with the normal demands of daily living. The MP concludes the Appellant has significant lack of coping skills and she is frequently restricted in her ability to perform dla for extended periods.

The assessor's section of the PWD application is completed by a social worker (SW). In it, the SW states the Appellant has a lack of emotional instability that significantly impacts her judgment and ability to manage dla. Under mobility and physical ability, the SW states the Appellant needs periodic assistance with climbing stairs, lifting and carrying and holding because of her physical pain.

Under cognitive and emotional functioning, the SW reports minimal impact in 1 of 14 functions, moderate impact in 7 of 14 functions and major impact in 4 of 14 functions. The SW comments that when the Appellant has a "major crash" she will not leave her home for days and not clean her house for weeks. The SW rates the Appellant as independent in all dla noting this independence is dependent on her emotional state and level of pain, and her depression can incapacitate her ability to get out of bed. Under social functioning, the SW rates the Appellant as needing periodic support in all areas and states she has very disruptive functioning in her immediate social network and marginal functioning in her extended social networks. The SW comments the Appellant needs ongoing interventions to provide external social and emotional support. The SW states the Appellant's emotional issues impair her daily functioning by inhibiting her ability to get out of bed, prepare meals, do basic housecleaning and have community relationships. In the additional letter, the SW states "in 13 years of private practice, I have yet to deal with a client with as much anxiety as presented by (the Appellant)". He continues that her anxiety significantly challenges her social interaction. He states he has observed over 3 years that the Appellant's reoccurring physical ailments have physically and emotionally debilitated the Appellant.

The Appellant's representative (Advocate) is the SW who completed the assessor's section of the PWD application. As Advocate, he submitted the Appellant's mental impairment is severe. He states the Appellant is challenged by constant episodes of depression and "highs" and suspects an undiagnosed bipolar disorder. He submits she needs daily assistance to be motivated to get out of bed, prepare meals, house clean and organize her life. He submitted that the Appellant must pick up her medication on a daily basis because she is unable to control a complete prescription. He states her ability to manage stress is almost nonexistent and daily functioning without support is not possible.

The Advocate questioned the Appellant's daughter who stated her mother is daily in a high or a low. When on a high, she cleans the home until she is exhausted and hurting, gets angry and "freaks out". When on a low, she remains in bed for days at a time. These episodes of highs last from a couple hours to a few days, the lows last several days to weeks. The daughter is moving out of the home in a few months and does not believe the Appellant can be on her own. The daughter states that she makes the majority of the meals, drives her mother to appointments and chores (the Appellant cannot drive) and does most of the grocery shopping.

The Advocate questioned the Appellant's friend who stated she is part of the Appellant's support system. She stated the Appellant requires a lot of emotional support. She is in contact with the Appellant on almost a daily basis and if she doesn't hear from her it means she has "shut down" and the friend must make a personal visit to help the Appellant get out of bed. The friend stated the Appellant cannot handle any stress and seems to be getting worse in her coping skills.

The Advocate, in his role as a SW and counselor to the Appellant stated in the 3 years he has known the Appellant she has not improved, that for the Appellant, life is overwhelming and she has to carefully pick her times to function because of the support she constantly needs. The SW explained that in the assessment section of the PWD application, when he noted the Appellant is independent in most dla, he was speaking of her "good" days, and his comments within the application are important, that is when the Appellant is in a depressive state, she is incapable of performing dla like meal preparations, shopping, cleaning and the motivation to get out of bed.

The Ministry did not object to the oral evidence as presented. The Panel accepts the oral evidence under EAA, Section 22(4)(b) because the Panel finds it supports the information within the documentation before the Ministry at the time of the reconsideration decision.

The Ministry states the Appellant is designated as a Person with Persistent Multiple Barriers (PPMB) and as such is not required to seek work. At the hearing the Ministry noted that most of the dla activities are checked as independent in the assessor's section of the PWD and the Ministry uses this information to make its decision.

The Panel finds:

- The Appellant is a recipient of PPMB benefits living with her daughter.
- The Appellant has chronic depression, anxiety, and panic attacks that will continue for more than 2 years.
- The Appellant has chronic knee pain, neck pain, and degenerative disc disease that will continue for more than 2 years.

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. The Ministry found the information submitted did not establish that the Appellant had a severe mental or physical impairment, and the impairment does not directly and significantly restrict her ability to perform daily living activities and she does not require significant help or supervision to another person to perform daily living activities.

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

(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 EAPWDR, 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 or mental impairment has not been established because the Appellant is able to walk up to 4 blocks, to climb 5+ steps and to lift up to 15 pounds. The Ministry determined the information is more in keeping with a mild to moderate physical impairment. The Ministry argues the majority of cognitive and emotional functions are in the moderate range and because the Appellant is able to make decisions about personal activities, care and finances as well as relate, communicate and interact with others effectively, the information speaks more to a moderate mental impairment.

The Appellant argues the screening questionnaire and her description of her battles with her mental and physical impairments illustrate a severe impairment and this severity is supported by the MP and

SW.

The Panel finds the Ministry made a reasonable determination that the information does not establish the Appellant has a severe physical impairment because although the MP and SW report the Appellant has chronic knee and back pain they report that she is capable of basic physical functions and skills.

The Panel finds the information supports the conclusion that the Appellant does have a severe mental impairment because of the MP diagnoses of chronic depression and anxiety disorder and his opinion that 7 of 12 cognitive and emotional functions are affected. The severity is also supported by the screening questionnaire scores that indicate both severe depression and severe anxiety. These scores are supported by the Appellant's description of her daily mental state. Furthermore, the SW states the Appellant presents the worst case of anxiety he has seen in 13 years of practice and that there is moderate or major impact in 11 of 14 of the Appellant's cognitive and emotional functions. In addition the SW states the Appellant requires periodic support or supervision in 5 of 5 social functioning areas and describes the Appellant as having very disruptive functioning and marginal functioning. The Panel finds the Ministry did not make a reasonable decision that the Appellant had a moderate rather than a severe mental impairment.

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 MP and SW reports the majority of the Appellant's dla are unrestricted and requiring only periodic help.

The Appellant argues the depression crashes cause her to spend days at a time in bed and her anxiety causes inability to leave the house or do household chores. This is supported by the MP's written comments in the Appellant's Health History, "Her lack of emotional stability has a significant impact on her ability to perform basic living activities." Later she says, "This makes the patient very unreliable on a day to day base ... even causing restriction in her ability to perform necessary living activities" and finally, "this all resulting in increased pain, physical disability and inability to cope emotionally.

The MP states the Appellant's impairment has a significant impact on her ability to perform dla. She reports the Appellant is periodically restricted in meal preparation, basic housework, and daily shopping. The SW rates the Appellant as independent in all dla noting this independence is dependent on her emotional state and level of pain. The Panel finds the comments by the SW noted in the dla section speak to a constant and frequent episodic impact in the Appellant's dla. This episodic impact is supported by the MP stating "frequent restriction in her ability to perform dla for extended periods" the Appellant's description of her daily struggles, her daughter's description of their home life, and the friend's description of the Appellant's support needs. The Panel finds the Ministry did not make a reasonable decision that the Appellant's impairment fails to directly and significantly restrict her dla.

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 depends on her daughter, her counselor and friends to cope with her dla.

The MP states the Appellant needs periodic help from the daughter, and ongoing individual, frequent

counseling to cope with the normal demands of daily living. This need of significant help is supported by the SW in both his written and oral evidence, the friend giving and realizing the Appellant's need for ongoing and frequent counseling and the daughter's active and ongoing support with the Appellant's dla. The Panel finds the Ministry did not make a reasonable decision that the Appellant does not require significant help of another person to perform her dla.

The Panel finds the Ministry's decision was not a reasonable application of the applicable legislation and rescinds the decision. The Panel finds in favor of the Appellant.