

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 26, 2011 which found that the appellant did not meet three of the five 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 two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, 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 the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated June 22, 2011, physician report dated June 23, 2011, and assessor report dated June 27, 2011;
- 3) Letter from the ministry to the appellant dated July 13, 2011, denying her request for persons with disabilities designation and enclosing the decision summary;
- 4) Letter from the physician who completed the PWD application 'To Whom It May Concern' dated April 18, 2011 which states that, due to a medical problem, the appellant is unable to work for the next six months; and,
- 5) Request for Reconsideration- Reasons.

At the hearing, the appellant stated that she wished her mother to speak for her as she felt nervous. The appellant's mother stated that the appellant cannot go out of their home by herself. When she tried to go to school, the appellant ended up throwing up every day and living on gravel. The appellant's mother explained that grades 9 and 10 were very rough for the appellant, but that her daughter has been super quiet since the day she was born. The appellant's mother stated that the appellant finished her schooling, grades 11 and 12, teaching herself at home. The appellant's mother stated that her daughter tried to go out on New Year's Eve and started throwing up and could not go. The appellant's mother explained that for years they did not know why this was happening and thought that there may be a problem with the appellant's bladder due to the associated bedwetting. They were somewhat relieved to know that it is an anxiety disorder because now they have an idea about how to treat her condition. The appellant is now taking anti-anxiety medications so that she does not throw up. The appellant's mother stated that even though the appellant can do online banking, as pointed out in the ministry's decision, the appellant cannot apply for a job and she therefore does not have any money to "bank". The appellant's mother also explained that there has been a referral to mental health, but she is working full-time and either she or the appellant's sister has to accompany the appellant everywhere, so they have not been able to schedule an intake appointment yet. The appellant's mother stated that the appellant still experiences bed-wetting if she has any anxiety. The appellant's mother stated that her daughter has been very ill for many years. In response to a question, the appellant stated that when she has to go out of her home she experiences rapid breathing and an increased heart rate and she cannot think straight. The appellant's mother added that even the thought of using the telephone makes the appellant turn completely white.

In her self-report included with the PWD application, the appellant adds that social anxiety makes it difficult for her to interact or communicate with the public, that she becomes distressed and her mother must accompany her while shopping or going to appointments. The appellant states that when she has been anxious for many days, she experiences bedwetting.

The physician who completed the physician report has confirmed that the appellant has been his patient for over 4 years and that he has seen the appellant 2-10 times in the past 12 months. The physician confirms a diagnosis of social anxiety disorder. The physician notes that the appellant's social phobia has severely impacted her life; she did almost all of grades 11 and 12 at home. The only time she has left home over the past two years is if she is accompanied by someone (her family, her boyfriend) and "...since starting on Paroxetine, her anxiety level has decreased." In terms of physical functioning, the physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more stairs unaided, and has no limitations with lifting or remaining seated. The physician reports that the appellant has not been prescribed any medication or treatments that interfere with her ability to perform DLA and does not report the use of any assistive devices. The appellant is assessed as independent in all areas of mobility and physical ability. In response to the question whether the appellant has any significant deficits with cognitive and emotional function, the physician has responded "no". In terms of daily impacts to cognitive and emotional functioning, the physician indicates in the assessor report that there is a major impact in emotion (e.g. excessive or inappropriate anxiety, depression, etc.) and a moderate impact to attention/concentration (e.g. distractible, unable to maintain concentration, poor short term memory), with no impact in 12 other areas of functioning.

The physician has commented that thinking about leaving her house makes the appellant feel anxious, she becomes pre-occupied with the bad things that might occur when she goes out to the point that she cannot think about anything else (i.e. ruminating). Her long term memory is poor; she often (daily) does not remember what she needs to do because her mind is racing, and she is easily distracted. The appellant's physician assesses the appellant as having a good ability to communicate. Continuous support/supervision is required with three aspects of social functioning, namely developing and maintaining relationships, dealing appropriately with unexpected demands and securing assistance from others, and periodic support/supervision with interacting appropriately with others, with a note by the physician that the appellant's mother helps with all these types of social interactions. The physician assesses good functioning with the appellant's immediate social networks and very disrupted functioning with her extended social networks, with the comment that the appellant is "...very isolated and only goes out if it is necessary and only if accompanied by friends, family." In the assessor report, the physician reports continuous assistance is required from another person for the tasks of going to and from stores, paying for purchases ("too uncomfortable to interact with cashier"), banking ("mother has to accompany her"), paying rent and bills ("pays bills online"), and filling/refilling prescriptions ("her mother takes her prescriptions to the pharmacy"). The physician adds that the appellant almost always goes out with a support person and that the only time she has gone out by herself in the past 6 months is about 6 times she has taken a relatively empty bus to meet her friends.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant 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 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 person 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. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, 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: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry's position is that although the appellant meets criterion 1 and 3 as set out in the legislation, in that she has reached the age of 18 and her impairments are likely, in the opinion of a medical practitioner, to continue for at least 2 years, the evidence does not establish that she has met criteria 2, 4 and 5. In particular, the ministry argues that the evidence does not show that the appellant has a severe mental or physical impairment and the prescribed professional did not confirm that the appellant's physical or mental impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods so 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 these activities.

The appellant argues that the evidence establishes that she suffers from a severe mental impairment as a result of social anxiety disorder. The appellant did not argue that the evidence establishes that she suffers from a severe physical impairment. The appellant contends that the prescribed professionals have provided sufficient evidence that the appellant's severe mental impairment directly and significantly restricts her ability to perform many DLA, for which she requires the significant help and supervision of another person, an assistive device, or the services of an assistance animal.

With respect to the existence of a severe mental impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of social anxiety disorder. The physician notes that the appellant's social phobia has severely impacted her life and that the only time the appellant has left home over the past two years is if she is accompanied by someone (her family, her boyfriend), but "...since starting on Paroxetine, her anxiety level has decreased." The physician reports that the appellant has not been prescribed any medication or treatments that interfere with her ability to perform DLA. And, in response to the question whether the appellant has any significant deficits with cognitive and emotional function, the physician has

responded "no". The panel notes that this response appears to be inconsistent with the assessment of daily impacts to cognitive and emotional functioning. In the assessor report, the physician indicates that there is a major impact in the area of emotion and a moderate impact in the area attention/concentration, with no impact in 12 other areas of cognitive and emotional functioning. The physician has commented in handwritten notes that the appellant's long term memory is poor, but has indicated that there is no impact to daily functioning in the area of memory. The panel places more weight on the physician's handwritten notes as being a detailed narrative of the impact of the appellant's impairment. The appellant's physician assesses the appellant as having a good ability to communicate. Continuous support/supervision is required with three aspects of social functioning, namely developing and maintaining relationships, dealing appropriately with unexpected demands and securing assistance from others, and periodic support/supervision with interacting appropriately with others, with a note by the physician that the appellant's mother helps with all these types of social interactions. The physician assesses good functioning with the appellant's immediate social networks and the panel notes that the physician has also commented that the appellant has a boyfriend and two close friends. However, the physician assesses very disrupted functioning with her extended social networks, with the handwritten note that the appellant is "...very isolated and only goes out if it is necessary and only if accompanied by friends, family." The evidence demonstrates that the appellant is suffering from anxiety that impacts her interactions in the community but that she does venture outside her home by herself occasionally to take a bus to meet friends, she is able to complete necessary tasks outside her home while accompanied by family and friends, and the anxiety has been decreased by medications. Overall, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

With respect to the existence of a severe physical impairment, the panel finds that the evidence does not indicate a diagnosis of a physical disorder. In terms of physical functioning, the physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more stairs unaided, and has no limitations with lifting or remaining seated. The appellant is assessed as independent in all areas of mobility and physical ability. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

Regarding the appellant's ability to manage daily living activities (DLA), the panel relies on the physician's assessments in the physician and assessor reports in the PWD application. For preparing her own meals, the appellant is assessed by the physician as functioning independently with all tasks. With respect to managing her personal finances, the physician indicates that the appellant requires continuous assistance from another person to do her banking and to pay her rent and bills with the note that the appellant pays bills online. Regarding shopping for personal needs, the appellant is assessed as requiring continuous assistance with two tasks that involve possible interactions with the public (going to and from stores, paying for purchases) but functioning independently with the other three tasks. For using public or personal transportation facilities, the physician has assessed the appellant as being independent with all tasks and notes that the appellant has used public buses about six times in the past 6 months. The appellant is assessed by the physician as independent with performing housework to maintain her place of residence in an acceptable sanitary condition, with moving about indoors and outdoors and with performing personal hygiene and self care. With respect to managing personal medication, the physician reports that the appellant is independent with 2 out of 3 tasks, requiring continuous assistance from her mother for filling/refilling prescriptions at the pharmacy. The physician has assessed the appellant as independent with making decisions about personal activities, care or finances and communicating effectively, while requiring periodic support/supervision with interacting appropriately with others. The panel finds that the appellant manages a majority of her DLA independently, although she requires continuous assistance with 8 of 33 aspects of DLA that are, for the most part, periodic tasks which involve interaction in the community. The panel also finds that the evidence demonstrates that the appellant is capable of performing most of these tasks with minimal assistance by another person, by way of attendance of a friend or family member as support. The panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician that the appellant lives with her mother and receives assistance from family and friends. As it has not been established that DLA are directly and significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, or an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

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