

### PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated September 15, 2011, which held that the Appellant was denied a request for Persons with Disabilities (PWD) designation. The Ministry concluded that the Appellant did not meet 2 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 the Employment and Assistance for Persons with Disabilities Regulation, section 2. The Ministry found that the Appellant met the age requirement and met the requirements that she has a severe mental impairment likely to continue for at least two years. The Ministry determined the Appellant did not meet the balance of the requirements because the evidence did not establish that in the opinion of a prescribed professional the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities continuously or periodically for extended periods and that, as a result of these restrictions, she does not require help or supervision of another person to perform daily living activities.

### 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**

In accordance with the Employment and Assistance Regulation section 86(c) the Appellant's witness gave testimony at the beginning of the hearing and was then excused.

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

- A letter from a legal advocate dated September 1, 2011 outlining the Appellant's ability to perform daily living activities.
- Employment and Assistance Request for Reconsideration dated August 15, 2011 containing a copy of Hudson vs. Employment and Assistance Appeal Tribunal, 2009, regarding PWD eligibility criteria.
- A letter from the Appellant's medical practitioner dated April 12, 2011, which outlines the Appellant's health status.
- A Persons with Disabilities Designation Application from the Appellant dated April 11, 2011.
- A medical practitioner's report for the Appellant's Persons with Disabilities Designation Application dated April 2, 2011.
- Assessor Report for a Persons with Disabilities Designation Application (completed by the Appellant's medical practitioner) dated April 2, 2011, which includes a two-page letter from the Appellant.
- A letter dated May 14, 2008 regarding a safety contract for the Appellant.

The physician's section of the PWD application was completed by the Appellant's general practitioner (GP). In it the Appellant is diagnosed with depression, chronic insomnia and anxiety disorders. The GP states that the Appellant has severe anxiety and when coupled with low mood causes significant difficulties with interaction with other people. The Appellant has frequent panic attacks and a chronic mood disorder. The GP also indicated that the Appellant's medication does interfere with her ability to perform daily living activities and this treatment will be long term, more than two years. Under functional skills the GP states that the Appellant can walk 4+ blocks, climb 5 steps, lift 2 to 7 kg and remain seated for less than 1 hour. The GP confirms that there are significant deficits with cognitive and emotional function including consciousness, executive, memory, emotional disturbance, motivation, impulse control and attention.

The assessor's section of the Appellant's PWD application is completed by the same GP. In it the GP states that the Appellant: a) lives with friends and is at a satisfactory level in terms of communication, b) needs periodic assistance from another person to climb more than 1 flight of stairs or lift or carry anything over 7 kg. Under cognitive and emotional functioning the GP reports major impact on daily functioning for 9 of the 14 criteria. The GP states that the Appellant has significant sleep issues, low mood, frequent panic attacks, occasional suicidal thoughts, poor concentration and memory, significant impulse control issues and difficulty with problem solving.

Under daily living activities the GP indicates the Appellant as independent in most aspects of personal care and basic housekeeping. The Appellant needs continuous assistance from another person in the area of shopping to a) make appropriate choices and b) carry purchases home. Some periodic assistance is required in meal preparation and taking medications. The Appellant can pay bills and use transportation independently. In the area of social functioning the Appellant needs

continuous support in order to develop and maintain relationships. The Appellant's GP describes the impact of her mental impairment on her immediate social network and extended social network as "very disruptive functioning". The Appellant's GP adds that she requires assistance periodically from her room mate.

The letter from the advocacy society states that the Appellant requires assistance in performing a number of her daily living activities such as cooking and housekeeping. The advocate submits that the Appellant does require significant help to perform daily living activities and that her impairment does significantly restrict her ability to perform daily living activities.

A letter from the Appellant's GP dated August 12, 2011 indicates that she suffers from a number of medical problems including asthma, anxiety, depression, insomnia and fibromyalgia. The Appellant requires help from her roommate to do cooking and housekeeping. In respect to the Appellant's social functioning the GP considers her to be marginal functioning at best. The GP concludes that the Appellant's impairment has significant impact on her social functioning and daily living activities.

At the hearing the Appellant's witness claimed the following; a) has been a room mate of the Appellant for six years, b) noticed a decline in the Appellant's memory, c) the witness does most of the cooking and heavy house keeping, d) the Appellant is in pain a lot and is tired and depressed, e) the Appellant needs help climbing stairs and carrying groceries and f) the Appellant's impairment has a significant effect on her daily living activities. The panel found this evidence to in support of the evidence that was before the ministry at the time of reconsideration.

At the hearing the Appellant's advocate summarized the information (physician and assessor reports) contained in the Appellant's application for PWD designation. The advocate also referred to a letter from the Appellant's GP which concludes that the Appellant has significant impact in both her social functioning and ADL's due to her medical condition.

The Appellant spoke with respect to the impact of her impairment on daily living activities. For example; a) she is in pain 75% of the time, b) cannot cook because the pots are too heavy for her to pick up, c) has great difficulty sleeping, walking and carrying, d) is lethargic because of pain and lack of sleep, e) has had some suicidal thoughts.

The Panel makes the following finding of Fact:

1. The Appellant is a recipient of income assistance and lives with a friend
2. The Appellant is diagnosed, by a medical practitioner, with a severe impairment that will continue for more than two years.
3. The Appellant is diagnosed to have asthma, anxiety, depression and insomnia along with fibromyalgia.

**PART F – Reasons for Panel Decision**

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated September 15, 2011, which held that the Appellant's request for PWD designation, was denied. The Ministry concluded that the Appellant did not meet 2 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 the Employment and Assistance for Persons with Disabilities Regulation, section 2. The Ministry found that the Appellant met the age requirement and met the requirements that she has a severe mental impairment likely to continue for at least two years. The Ministry determined the Appellant did not meet the balance of the requirements because the evidence did not establish that in the opinion of a prescribed professional the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities continuously or periodically for extended periods and that as result of those restrictions she does not require help or supervision of another person to perform daily living activities.

The following legislation applies to this appeal:

**Persons with disabilities**

**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).

### Daily living activities

**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 Appellant and her advocate argue that the Appellant's severe impairment does significantly and directly restrict her ability to daily living activities. Further, the advocate argues that the Appellant's roommate provides significant help or supervision to the Appellant. The advocate also argues that the Appellant's GP letter dated August 12, 2011 supports their case in that the GP states the Appellant's impairment has significant impact on both her social functioning and daily living activities.

The Ministry argued the Appellant meets only three of the five required legislative criteria in order to qualify for PWD designation. The Appellant meets the age requirement and does have a severe mental impairment as per EAPWD Act section 2(2) as well as fulfilling the requirement in EAPWD Act section 2(2)(a) (duration of impairment). It is the Ministry's position that the Appellant does not meet the legislative criteria in the EAPWD Act section 2(2)(b)(i)(ii) or 2(3)(a)(b).

The evidence of the Appellant and her witness is "in support" of the information and records before the minister at reconsideration and thus the panel has determined it is admissible pursuant to s. 22(4)EAA. While this evidence addresses restrictions of daily living and the need for help, the legislation as per EAPWD Act s. 2(2)(b) limits the information about whether a person is directly and significantly restricted in their daily living activities and whether as a result of these restrictions a person needs help to perform them to the opinion of a prescribed professional.

The Panel reviewed the physician's report (PR) and assessor's report (AR) contained in the Appellant's application for PWD designation as well as the GP's letter (GPL) dated August 12, 2011. The Appellant: a) prepares her own meals but without periodic help this can take an inordinate amount of time as found in (PR, AR, GPL), b) manages her personal finances independently as found in (AR), c) shops for personal needs although she needs continuous assistance to make appropriate choices and carry anything over 7kg as found in (AR), d) uses public transportation independently although anxiety can be a periodic problem as found in (AR, PR), e) moves about independently indoors and outdoors but needs periodic assistance to climb more than one flight of stairs and carry anything over 7kg as found in (AR), f) performs personal hygiene and care independently as found in (AR), g) manages her personal medication with periodic assistance as found in (AR), h) requires periodic assistance in the area of basic housekeeping as found in (AR), i) is independent in social functioning but needs continuous support in the area of developing and maintaining relationships as found in (AR, GPL).

There are some aspects of a daily living activity in which the Appellant is restricted; however the legislation also requires that the restriction be either continuous or periodic for extended periods. In reviewing the daily living activities where the Appellant has been found to have some restriction, four (4) are indicated to be restricted only periodically and not periodically for extended periods: "prepare own meals", meal preparation and cooking take longer when fibromyalgia pains are most intense; "medications", taking as directed; "basic housekeeping", requires help from roommate and "basic

mobility", needs help if greater than one (1) flight of stairs, lifting carrying and holding (over 7kg). Only two(2) daily living activities indicate some aspect where the restriction performing the activity is continual: "shopping", two of the five aspects of this activity, making appropriate choices and carrying purchases home; and "social functioning", one of five aspects of this activity, requires continuous support in order to develop and maintain relationships.

As the Appellant is able to perform many of the activities of daily living independently, the Panel finds the Ministry's decision that the Appellant is not directly and significantly restricted in her ability to perform her daily living activities continuously or periodically for extended periods to be a reasonable application of the legislation in the circumstances of the Appellant. The Panel also determines that the Ministry was reasonable in determining that as it had not been established that the daily living activities are directly and significantly restricted, it cannot be determined that significant help is required from another person.

The Panel confirms the Ministry's decision.