

### PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision of January 11<sup>th</sup>, 2011 in which the Ministry determined that the Appellant was not eligible for Persons With Disabilities designation, as she did not meet three (3) of the five (5) statutory requirements under Section 2 of the Employment and Assistance for Persons With Disabilities Act. The Appellant met the age requirement and she has an impairment that is likely to continue for two (2) years or more. However, the Ministry was not satisfied that the Appellant has a severe physical or mental impairment or 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. The Ministry also found that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the Appellant requires help 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

The evidence before the Ministry at Reconsideration was comprised of a PDW Application (Physician's Report), (PR and Assessor's Report), (AR).

The evidence before the Panel was provided in part in the Appeal Record and in part through the oral testimony presented by the Appellant and the Ministry, which was admitted pursuant to Section 22 (4) of the EAA.

In the Appeal Record as part of the evidence were copies of the following documents:

1. The Appellant's Notice of Appeal dated January 11<sup>th</sup>, 2011.
2. Letter to the Appellant from the Ministry dated January 11<sup>th</sup>, 2011.
3. The Appellant's Form EIA100 - Employment and Assistance Request for Reconsideration.
4. Letter to the Appellant from the Ministry dated November 2<sup>nd</sup>, 2010.
5. The Appellant's Persons With Disabilities Application date stamped by the Ministry as of June 15<sup>th</sup>, 2010.

The Physician's Report provides the evidence that the Appellant suffers from Attention Deficit Hyper-Activity Disorder and depression and the Appellant requires regular medication to control ADHD symptoms. She suffers from chronic insomnia, is disorganized in her thought process, and unable to concentrate with the tasks at hand. The symptoms are only partially relieved by medication. She has struggled through her schooling and has recently enrolled in college. The physician states the Appellant is severely compromised in her organizational skills, poor memory, has decreased motivation, sleep disturbance and depression. She has poor coping skills in response to stress.

The physician indicates she has a chronic condition, which is unlikely to diminish in severity and is likely to continue for two (2) years or more from the date of the Application.

On functional skills the physician indicates the Appellant can walk four (4) plus blocks, can climb five (5) plus stairs, can lift sixteen (16) kilograms. The Appellant can remain seated for less than one (1) hour. She has no difficulties with communication. He does indicate there are deficits with the cognitive and emotional functioning and he has checked the areas of executive thinking and her memory skills.

The Appellant's physician also completed the Assessor's Report. In the area of ability to communicate he indicates the Appellant is good in the areas of speaking, reading, writing and hearing. With respect to physical ability and mobility he indicates the Appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding. With respect to personal care the Assessor indicates the Appellant is independent in the categories of dressing, grooming, bathing, toileting, feeding self and regulating her diet. He states that with respect to transfers in and out of bed and on and off a chair that the Appellant is unable to get out of bed or chair quickly due to back pain. He has checked the boxes that it takes significantly longer than typical. In the area of basic housekeeping the Assessor has indicated the Appellant is independent when doing her laundry but with her basic housekeeping that it takes significantly longer to do her household chores. The Appellant is independent with respect to going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home.

With respect to meals the Assessor has indicated the Appellant is independent with respect to meal planning, food preparation and the safe storage of food, but requires periodic assistance from another person and has added the explanation that she burns her food due to inattention.

The Assessor indicates the Appellant is independent with respect to banking, budgeting, paying rent and bills. She is independent in filling and refilling prescriptions, safe handling and storage of prescriptions, but need periodic assistance in the taking of medications as directed and he has added the explanation she misses doses due to her inattention. With respect to transportation the Assessor indicates she is independent in the area of using public transit and using transit schedules, however she takes significantly longer on getting in and out of a vehicle due to her back pain.

The Assessor indicates in the area of social functioning the Appellant is independent in all categories. With respect to how her mental impairment affects the Appellant's relationship with her immediate social network the Assessor has indicated she has very disruptive functioning, and in the additional comments indicates she has little significant communication with her mother. With respect to her extended social network the Assessor indicates she has good functioning.

The Assessor indicates that the Appellant gets help for her daily living activities as provided by the health authority professionals and that specifically she requires monitoring and adjustment in her medication dosages. She does not rely on any assistive devices nor does she rely on an assistance animal.

With respect to her mental and physical impairment under the cognitive and emotional functioning the Assessor has indicated there is a major impact on her daily functioning in the area of her attention concentration. He indicates there is a moderate impact in the area of her emotions, insight and judgment, her executive thinking, memory, and her motivation and some other neuropsychological problems. In the extra comments the Assessor indicates the impact on her daily functioning is moderately affected in the areas indicated. He indicates she will require assistance in her studies as she progresses in school.

The Appellant gave the following additional evidence at the Appeal Hearing. The Appellant states she also has a sleeping disorder, suffers post-trauma stress disorder (PTSD) and has a back disorder, which causes back pain. She stated the back pain prevents her from sitting or standing for long periods of time and she cannot push or pull. She states she cannot lift over twenty-two pounds and is unable to lean forward to do dishes and needs too use a dishwasher. She said her back hurts when she has to stand to make dinner or do anything that requires standing.

The Appellant stated her ADHD causes focus problems and in school she was behind in some subjects. She states she graduated with a Disability Dogwood Certificate but only had seventy-six (76) of the eighty (80) credits required. She states she is taking adult basic education to upgrade herself and wants to go to university to study to become a writer.

She states she has had some severe psychological problems and ended up in a psychiatric ward in each of two (2) different provinces for two (2) week periods on each occasion. The Appellant states she does not socialize real well and she would rather stay at home because of her depression. The

Appellant indicated she agreed basically with what had been set forth by her physician and Assessor in the Application form.

At the Hearing the Ministry provided no additional evidence, however the Ministry did review the evidence in the Application form and reviewed the decision as provided by the Reconsideration Officer.

There is no conflict in the evidence between that of the Ministry and that of the Appellant.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry reasonably concluded that the Appellant does not have a severe physical or mental impairment and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that the Appellant does not require help to perform DLA. The Ministry determined that the age requirement had been met and that the Appellant has an impairment that will last for two (2) years.

Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) which states, "(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;

**"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", sets out the criteria that have to be met to be granted the status of Persons with Disabilities under the legislation.

Section 2 of the Employment and Assistance for Persons With Disabilities Regulation is as follows:

### 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) manage 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 Panel examined the evidence to determine the reasonableness of the Ministry's decision that the remaining three (3) criteria had not been met:

1. Does the information provided establish that the Appellant has a severe mental or a severe physical impairment?

The Ministry's position is that after considering the evidence set out in the Appeal Record and in particular the Physician's Report and the Assessor's Report, that the information does not establish a severe physical impairment. The Ministry relies on the evidence in the PR that the Appellant can walk four (4) plus blocks unaided on a flat surface, can climb five (5) plus stairs, can lift items weighing fifteen to thirty-five (15 to 35) pounds and can remain seated for less than one (1) hour. The Ministry also relies on the AR wherein the Assessor indicates the Appellant is independent with all lists of mobility and physical abilities and as such the Ministry finds a severe physical impairment has not been established.

The Ministry takes the position that the information provided does not establish a severe mental impairment. The Ministry relies on the evidence of the physician who completed both the

Physician's Report and the Assessor's Report. He indicates that the Appellant has significant deficits with cognitive and emotional functioning in the areas of executive thinking and memory and indicates these deficits have a major impact on attention concentration. There is a moderate impact on emotions, insight and judgment, executive thinking, memory, motivation and other neuropsychological problems. The Assessor goes on to indicate that the Appellant in her daily functioning is moderately affected by the areas indicated and he also notes that the Appellant will require assistance in her studies as she progresses in school. Based on this the Ministry takes the position that a severe mental impairment has not been established.

The position of the Appellant is that the combination of her back disorder which causes back pain, her sleep disorder, her depression and the ADHD, when all taken together create a severe impairment and in particular a severe mental impairment. She relies in part on her own evidence and she relies on the evidence in the Physician's Report that she does suffer from depression, and the Attention Deficit Hyperactivity Disorder. She relies on the evidence in the Assessor's Report that there is a major impact on her concentration and moderate impacts on her emotions, Her insight and judgment, her executive thinking, her motivation and in particular on her memory, as all of these has had a large impact on her ability to obtain her education.

The Panel finds that a medical practitioner has diagnosed the Appellant with Attention Deficit Hyperactivity Disorder and depression, however there is no diagnosis with respect to sleeping disorders or the back pain. The Panel finds that the evidence in the Physician's Report and the Assessor's Report indicates little physical impairment as the Appellant can walk four (4) plus blocks, climb five (5) plus stairs, can lift seven to sixteen (7 to 16) kilograms. She can remain seated for less than one (1) hour appears to be the only limitation. The Assessor has indicated the Appellant is independent in all categories of mobility and physical ability. The Panel finds that the Appellant's evidence regarding the back disorder and back pain is not supported by a specific diagnosis from her physician although he does refer to it in the narrative of the report. For these reasons the Panel finds that the Ministry reasonably determined that a severe physical impairment was not established under Section 2 (2) of the EAPWDA.

Regarding the existence of a severe mental impairment the Appellant argues that the Attention Deficit Hyperactivity Disorder, depression and sleep problems create a severe problem for her in the areas of attention concentration, memory and that there is a significant impact on her with respect to her emotions, insight and judgment, executive thinking and her motivation, all of which has resulted in her having difficulty in school and has left her behind in her schooling. The Ministry's position is that the information provided does not establish a severe mental impairment. While the Appellant's physician in completing both the Physician's Report and the Assessor's Report indicates the Appellant has significant deficits with cognitive and emotional functioning in the areas of executive thinking and memory and indicates these deficits have a major impact on attention concentration, a moderate impact on emotion, insight and judgment, executive thinking, memory, motivation and other neuropsychological problems. He provides the additional comment that the impact on daily functioning is moderate. He has provided evidence that the Appellant will require assistance in her studies as she progresses in school. As the Appellant has progressed reasonably well in school the Ministry finds that a severe mental impairment has not been established.

The Panel finds that the medical practitioner has diagnosed the Appellant with ADHD and depression and that this has a major impact on her daily functioning in the area of attention concentration and moderate impact in the areas of emotion, insight and judgment, executive thinking, memory, motivation and other neuropsychological problems. Additionally, in the area of social functioning the Assessor has indicated the Appellant has disrupted functioning in her immediate social network as she has little significant communication with her mother, however he has indicated she is independent in all categories of social functioning and in her extended social network she has good functioning. The Assessor has indicated her daily functioning is moderately affected by these factors and she will require assistance in her studies as she progresses in school. The Appellant in her own evidence confirmed there are some moderate impacts on her daily functioning but that she has obtained her Grade 12 Certificate although she was short by four (4) credits. She has indicated she is currently in an adult basic education program taking upgrading courses so that she can go on to University to become a writer. The Panel finds that there is an absence of evidence showing how the ADHD or depression has any significant impact on the Appellant's ability in the area of independent functioning and that the Ministry reasonably determined that a severe mental impairment has not been established under Section 2 (2) of the EAPWDA.

2. Does the information establish that, in the opinion of a prescribed professional, the impairment directly and significantly restricts daily living activities either continuously or periodically for extended periods?

The Ministry takes the position that the Appellant does not have a severe impairment that in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities. The Ministry relies on the evidence of the Appellant's physician who indicates the Appellant takes significantly longer with transfers in and out of bed and on and off chairs, basic housekeeping and getting in and out of a vehicle. He comments that the Appellant is unable to do these activities as quickly as other people due to back pain and it takes longer to do household chores, but does not indicate how much longer than typical these activities take. The Appellant requires periodic assistance with cooking as she burns food due to inattention and needs help with taking medications due to inattention. However he does not indicate the type of assistance required and whether the Appellant requires the help periodically for extended periods of time. The Appellant's physician indicates in his reports that the Appellant can do all other listed daily living activities independently. He indicates the Appellant is independent with all areas related to social functioning and that while she has disruptive functioning with her immediate social network as she has limited significant communication with her mother, the Appellant has good functioning with her extended social networks. Accordingly, the information provided in the view of the Ministry does not establish significant restrictions to the Appellant's daily living activities.

The position of the Appellant is that she agrees with the Assessor's Report and she really is independent with respect to her daily living activities. She takes the position that she does take longer to get in and out of bed, and to get on and off chairs because of the back pain and that her lack of focus results in her burning her food and not remembering to take her medication from time-to-time.

The Panel finds that the evidence of the Assessor is that the Appellant is independent in most areas of her daily living activities. He indicates she take significantly longer with respect to getting in and out of bed or on and off chairs and takes significantly longer doing her basic housekeeping. The Assessor also indicates the Appellant needs periodic assistance with respect to cooking as she burns her food due to lack of attention and periodic assistance with respect to taking medications as directed as she sometimes forgets due to inattention. The Assessor indicate she takes significantly longer getting in and out of vehicles due to back pain and that she is independent in all areas of social functioning, Based on the above evidence the Panel finds that the Ministry reasonably determined that a direct and significant restriction in the Appellant's ability to perform daily living activities either continuously or periodically for extended periods, in the opinion of a prescribed professional, was not established under Section 2 (2) (b) (i) of the EAWPDA.

3. Does the Appellant require help with her daily living activities by way of an assistive device, the significant help of another person or the service of an assistance animal?

The position of the Ministry is that it has not been established that daily living activities are significantly restricted therefore it cannot be determined if significant help is required from other persons. There is no indication that the Appellant routinely requires equipment or devices to help compensate for her impairment.

The position of the Appellant is that while she does need reminders with respect to paying attention in cooking she has been better recently and while she does sometimes forget to take her medication she is currently only on antidepressants. She indicates she does get help from health professionals but otherwise takes care of herself and is currently living with friends.

The panel finds, after reviewing the evidence, that the ministry decision that the Appellant did not need significant help from other persons or need the use of an assistive device or an assistance animal because it had not been established that the Appellant's daily living activities were significantly restricted, was reasonable.

The Panel finds that the Ministry's decision was reasonably supported by the evidence and that there has been a reasonable application of the Act and Regulation in the circumstance of the Appellant and confirms the decision of the Ministry pursuant to Section 24 (2) (a) of the EAA and the Appellant is unsuccessful on this Appeal.