

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 2, 2011 which held that the appellant did not meet 3 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. 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 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 (Physician Report (PR), Assessor Report (AR) and Self-report (SR)), a December 1, 2010 letter written by the appellant and signed on December 7, 2010 by the physician who completed the PR and AR, and a December 2, 2010 advocate's submission.

In the PR, completed by the appellant's general practitioner of 11 years, the appellant is diagnosed with inflammatory arthritis and colitis both of which are permanent. Narrative is that with flare-ups, which are unpredictable, the colitis can be moderately severe leaving the appellant housebound due to frequent and painful bowel movements with blood and, even outside these episodes, the appellant has frequent bowel movements and diarrhea. Arthritis primarily affects the wrists and hands to the point that the appellant cannot drive a car, write, use a computer, or prepare meals without help from family. Regarding Functional Skills, the appellant is able to walk 4+ blocks and climb 5+ steps unaided, lift under 5 lbs, and has no limitations remaining seated. There are no difficulties with communication or significant deficits with cognitive and emotional function. Additional narrative is that the appellant cannot perform all of her DLA.

In the AR, completed by the same general practitioner, the appellant's Ability to Communicate is reported as good for speaking, reading and hearing and poor for writing ("cannot hold pen for anything other than brief periods"). Regarding Mobility and Physical Ability, the appellant independently manages walking indoors and outdoors, climbing stairs, and standing. Lifting and carrying/holding requiring continuous assistance due to pain which limits holding and lifting to 10 lbs. Regarding DLA, periodic assistance is indicated for 2 aspects of personal care (dressing, grooming – needs help putting clothes on and taking them off as well as with buttons, hair and foot care, and uses an electric toothbrush), 1 aspect of shopping, (going to and from stores – at times unable to hold steering wheel to drive) and 1 aspect of transportation (getting in and out of a vehicle – opening door and pushing open). Continuous assistance is indicated for both aspects of basic housekeeping (unable to do repetitive hand movements or any push/pulling), 1 aspect of shopping (carrying purchases home) and 2 aspects of meals (food preparation and cooking – cutting up food, lifting pots/pans or stirring). Additional narrative is that the appellant's children do the laundry, vacuuming, dishes, driving and help with most meals. Equipment or devices used are resting splints while sleeping, braces used for protection and reinforcement of hands and wrists, and specific tools for preparing and eating food. Equipment required, but not currently used, is shower/tub bars and door handles rather than knobs.

In the SR, the appellant describes symptoms that may result from autoimmune ulcerative colitis and colitis arthritis. The appellant reports that symptoms leave her housebound for days when she has flare-ups. The appellant plans her life around the colitis and, when traveling, dining out or socializing, she must know where the restrooms are and, has had to cancel plans due to her illness. In the past, she was able to find accommodating employers and work from home. However, since suffering from arthritis, she is no longer able to use her wrists and hands and anything involving the use of her hands is painful. She can no longer perform normal household activities such as preparing meals and keeping house and can no longer enjoy recreational activities.

In her December 1, 2010 letter, the appellant writes that, due to arthritis, she is unable to open tight cans or jars or hold pots and pans and requires daily assistance with meal preparation and must have someone cook for her. Daily assistance is required with dressing (zippers and buttons) due to poor dexterity with dressing and grooming taking 3-4 times longer than normal. Her colitis is very unpredictable with flare-ups that can last days, weeks, or months and occur frequently enough that she stays mostly at home. As a result, she has few friends and feels socially isolated and unable to participate in regular activities outside her home. She is able to walk 4+ blocks but only between flare-ups. Oral medication and twice-weekly injections required for arthritis cause headaches and nausea that are severe enough that she is unable to eat for 24 to 36 hours afterwards.

Medication also causes fatigue and borderline anemia requiring rest during the day. Pain and discomfort from the arthritis and colitis, and the side effects of medication, have resulted in reduced motivation, poor memory, and concentration. She relies on her children for assistance with all aspects of weekly shopping, daily meal preparation, cooking, housekeeping, and laundry and with buttons and zippers when dressing. The appellant's physician has signed a statement that she agrees that the appellant's statement is an accurate assessment of her health condition and current circumstances and that she can confirm that the appellant's disabling conditions are severe enough to restrict DLA to the point where she requires significant assistance and/or takes considerably longer than normal to perform.

At the hearing, the appellant provided the following oral testimony. On average, she is unable to leave her home twice a week due to her colitis. She does not go out much due to the colitis and, when she does, must take a change of clothing. She has continuous pain from the arthritis and the medication results in continuous stomach pain and headaches. She has recently started taking additional medication for the headaches. She is unable to drive and has a friend who helps with grocery shopping on Wednesdays and another friend who provides assistance on Saturdays. Her children do all of the laundry, cooking, dishes, vacuuming, dusting, and driving and assist her with dressing and sometimes bathing. She tries to wear pants with elasticized waists and tee shirts to avoid buttons and zippers which she cannot manage. The appellant confirmed the use of wrist braces during the day and resting braces at night.

No additional evidence was provided by the ministry at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant has not met the criteria for designation as a PWD because she does not have a severe physical or mental impairment, which, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA. The ministry determined that the age requirement was met and that she has an impairment that will last for 2 years.

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.

Respecting the existence of a severe physical impairment, the appellant's position is that she has two debilitating medical conditions, ulcerative colitis and inflammatory arthritis, which severely impair her due to extreme pain with flare-ups of colitis that can last for months and the inability to use her hands due to arthritis. The appellant also argues that she is further impaired by the side effects of the medication she takes for her arthritis. The ministry's position is that a severe physical impairment is not established by the evidence respecting the appellant's ability to walk, climb stairs, remain seated, and lift (up to 10 lbs). The ministry further contends that, while the appellant is housebound during exacerbations of ulcerative colitis, the physician has not commented on the frequency or duration of exacerbations and reports that medications can help modify to some degree.

The panel finds that a medical practitioner has diagnosed the appellant with ulcerative colitis and inflammatory arthritis, the latter of which primarily affects the appellant's hands and wrists. The panel finds that the evidence provided by the physician respecting the appellant's functional skills and mobility and physical ability is not indicative of a severe physical impairment as the only noted limitation is a lifting limit of 10 lbs. However, the information provided by the appellant, and confirmed by her physician, is that she has flare-ups of colitis which last for a period of days to months with sufficient frequency that she remains home most of the time due to the symptoms of pain and diarrhea. Additionally, the evidence of both the appellant and her physician is that the appellant's use of her hands is continuously limited to the point where she requires ongoing assistance with housekeeping, meals, dressing, and transportation. Further, arthritis medication, which is taken twice weekly, causes severe headaches and nausea which last for between 2 and 3 days. The panel finds that, in light of the above evidence of the appellant and her physician respecting the continuous limitations to physical functioning resulting from arthritis and the evidence respecting the impact recurrent flare-ups of colitis and arthritis medication have on the appellant's functioning, the ministry unreasonably 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 does not identify a mental impairment but does report that pain and the side effects of medication taken for her arthritis and colitis result in reduced motivation, poor memory and poor concentration. The ministry's position is that there is no evidence of a mental health disorder or resultant severe mental impairment.

The panel finds that a medical practitioner has neither diagnosed the appellant with a mental impairment nor reported any deficits with cognitive and emotional functioning and therefore finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Regarding the degree of restriction with DLA, the appellant argues that her DLA are severely restricted to the point where she requires significant assistance from others or takes considerably longer to perform DLA than would be considered normal. The ministry argues that, as most DLA require either little or no assistance from others, the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry further contends that the narrative describing help with some activities is not compelling, for example, the appellant cannot lift over 10 lbs and is unable to hold the steering wheel at times.

The panel finds that the evidence of the appellant's physician, a prescribed professional, in the AR is that the appellant manages all cognitive aspects of DLA independently. However, regarding the physical aspects of DLA, the appellant requires continuous assistance with basic housekeeping, laundry, carrying purchases home, food preparation, and cooking. Periodic assistance is required for dressing and grooming with narrative that the appellant requires help dressing and undressing, with buttons, and with hair and foot care. Additionally, periodic assistance is required for getting in and out of a vehicle due to difficulty opening the door and for going to and from stores due to difficulties holding the steering wheel at times. The panel finds that the evidence in the appellant's December 1, 2010 letter, which was confirmed by the prescribed professional, confirms these restrictions when indicating that assistance is required with all aspects of weekly shopping, daily meal preparation, cooking, housekeeping, laundry, and with buttons and zippers when dressing. Additionally, dressing and grooming are described as taking 3-4 times longer than typical. The panel also accepts the evidence in the December 1, 2010 letter as establishing that the appellant is further restricted in her ability to mobilize and manage DLA when experiencing flare-ups of colitis which occur frequently enough that the appellant stays mostly at home and last for days, weeks, or months. Based on the above identified restrictions with DLA, the panel finds that the ministry unreasonably determined that a direct and significant continuous restriction in the appellant's ability to perform DLA, in the opinion of a prescribed professional, was not established under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant argues that due to the severity of her impairments, she requires the significant assistance of another person to complete many DLA. The ministry argues that it has not been established that DLA are significantly restricted therefore, it cannot be determined that significant help is required from other persons.

The panel finds that the evidence of the prescribed professional establishes that the appellant requires continuous assistance from another person with housekeeping and meals, periodic and continuous assistance with aspects of shopping, as well as periodic assistance with aspects of personal care and transportation. Additionally, the prescribed professional indicates that the appellant requires the continual use of hand and wrist braces, special tools for preparing and eating food, and grab bars for bathing. In view of this evidence, the panel finds that the ministry unreasonably determined that the appellant does not require help to perform DLA which are directly and significantly restricted under section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was not reasonably supported by the evidence and rescinds the decision.