

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 8, 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 ministry did not attend the hearing. After confirming that the Ministry was notified, the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at reconsideration was comprised of: a PWD application dated September 4, 2010 including a Self Report (SR) prepared by the appellant's advocate dated July 27, 2010; a Physician Report (PR) dated June 22, 2010; an Assessor Report (AR) dated June 29, 2010; the Request for Reconsideration dated November 10, 2010 and a letter from the appellant's friend dated November 3, 2010.

In the PR, the appellant's medical practitioner of 10 years provides the following information. The appellant is diagnosed with "Vasculitis", a sensory disorder since March 2010. The medical conditions relevant to the appellant's impairment are listed as follows: skin necrosis in legs and ears; risk of organ failure (kidneys); associated arthritis and joint pain/stiffness; post exertion fatigue; tender finger tips which make it difficult to hold things and she can't stand, sit or walk for long durations. The appellant is being followed by a Rheumatologist and takes prednisone and methotrexate. The appellant has not been prescribed any medication that interferes with her ability to perform DLA and she does not require any prostheses or aids. The physician reports that the "Autoimmune Vasculitis may be lifelong". The physician adds that he has seen the appellant 2-10 times in the past 12 months and she has had multiple ER visits in March 2010.

Regarding Functional Skills, the appellant is able to walk 2 to 4 blocks and climb 5+ steps unaided; can lift 15-35 lbs. and remain seated less than 1 hour. She has no difficulties with communication and there are no significant deficits with cognitive and emotional function.

In the AR, completed by the same medical practitioner; he responds to the question concerning the impact of the appellant's impairment on her ability to manage DLA that "Vasculitis causes joint swelling and pain in the legs. Tender fissure in fingertips". The appellant's Ability to Communicate is reported as good in reading, writing and hearing however speaking is rated satisfactory with a note that sores on tongue affect talking and can cause drooling. All aspects of Mobility and Physical Ability are indicated as taking significantly longer than typical with a note stating: the appellant can only do 30 minutes of housework then needs to rest; can only walk 3 blocks then needs to stop and elevate her feet and symptoms are chronic and daily. Regarding DLA, the appellant independently manages all aspects of Personal Care, Pay Rent and Bills, Medications and Transportation. Under Basic Housekeeping two (2) aspects: laundry and basic housekeeping as well as under Shopping two (2) aspects: going to and from stores and carrying purchases home are indicated as taking significantly longer than typical with notes referring "can only do 30 minutes before need to rest" and "can't do heavy lifting". Additionally it is noted that "fingertip pain/tenderness limits carrying". DLA under Meals, two (2) aspects: food preparation and cooking are indicated as taking significantly longer than typical with notes referring "difficulty opening containers or using can opener. Can't stand for too long". In terms of assistance provided by other people the prescribed professional (PP) reports "opportunistic use of friends for carrying heavy things". As for assistance that would be necessary the PP indicates "Housekeeping services". When asked to provide any additional information that may be relevant to understanding the nature and extent of the appellant's impairment and it's effect on DLA, the PP states "Chronic condition requiring disease modifying drugs that may have disabling effects in the future".

In the SR, the appellant is said to suffer "from a severely restricted lifestyle as a result of disability". It suggests that the appellant's "immune system is attacking her major organs" which leads to "fluctuating flu like symptoms" that strike on a frequent and ongoing basis. The appellant also suffers from skin lesions that during an outbreak can cover her entire body and even develop in her mouth. The lesions are very painful when agitated and severely restrict the appellant's ability to accomplish a variety of DLA. The appellant is affected periodically by lesions which are "extremely restrictive but not as restrictive as the continuous bouts of

exhaustion brought on by her flu like symptoms". The appellant "claims that the pain that she experiences as a result of vasculitis as debilitating" and that the Prednisone that she is prescribed is often not enough to assist her in being functional enough to actively participate in daily life.

The appellant finds that every aspect of her life has been significantly affected by Vasculitis; "During flare-ups which occur frequently, she can become completely incapacitated and experiences fluctuating levels of both pain and fatigue. For example, on frequent bad days when she is experiencing an outbreak, showering and the use of soap and creams on her body can be very painful and as a result she will often go without the necessary basic daily hygiene that she requires. Standing on her feet for to [sic] long nearly always causes swelling of the joints." When walking or standing the appellant "can feel her skin swell to the point where it feels as though it may burst at any moment". The appellant indicates that walking one block with groceries in hand on a bad day would leave her completely incapacitated for the rest of the day. She spends three to four hours a day resting to regain her strength in order to go about preparing a basic meal or doing some laundry. Periodically, the appellant is "unable to bend down to clean the floors or the bathroom, carry laundry to the machine, and stand long enough to cook or do dishes". The appellant "has found it increasingly difficult to build positive relationships and as a result is experiencing increasing social isolation".

In a letter submitted by the appellant's friend, it states that her "ability to stand or walk for any length of time is severely limited and she is in constant pain". The friend indicates that he has to take the laundry up and down the stairs for her and frequently wake her in the night to give her medication.

At the hearing, the appellant provided a letter from her PP dated 12 January 2011, an additional SR prepared by the appellant's advocate, not dated and Ten (10) copies of admission reports from the same medical clinic dated from 15 July through to and including 22 December, 2010. Also included was a physician's letter dated October 12, 2010.

The panel finds that the foregoing new evidence is admissible under section 22(4) of the EAA as being in support of the information before the ministry at the time of reconsideration.

In the letter from the PP, it reconfirms the appellant's diagnosis with Vasculitis and reports that she "has many symptoms that significantly restrict her from performing activities of daily living (ADL) and as a result of this restriction her disability should be described as severe in nature". He adds that the appellant "experiences fluctuating flu-like symptoms that restrict her ability to perform ADL's on a periodic and continuous basis day-in-and-day-out. Furthermore, she experiences arthritic symptoms related to vasculitis, which cause significant pain" and reduce the appellant's ability "to carry and lift items on a continuous basis". Her "recurring skin lesions which are very painful and serve to further reduce her capacity to attend to ADL". She "experiences frequent fatigue that restricts her ability to perform basic housework". The PP suggests that during these times the appellant would benefit by having some kind of home support to assist with cooking, cleaning, laundry and other household tasks. He indicates that she "requires continuous assistance with grocery shopping and various other errands that require lifting". The PP indicates that the appellant "is significantly restricted in terms of basic mobility, both inside and outside of her home". He adds that the appellant on recurring occasions "is unable to leave her home to walk any distance as a result of high fatigue and chronic pain. This level of impairment occurs periodically". He adds that she "is most often in chronic pain and finds basic mobility to be an increasing challenge in her daily life. It is my professional medical opinion that she faces significant restriction in her ability to walk and that she takes significantly longer to do so on a frequent basis. All basic mobility causes a significant amount of pain and takes significantly longer than the average individual to accomplish". The PP adds that the appellant avoids the use of stairs whenever possible and cannot remain seated for extended periods of time as a result of chronic pain. Also he reports that she is only able to stand for very short periods as a result of her symptoms. Finally, the PP states that in his opinion the appellant's "condition be described as severe as she is significantly restricted from performing ADL as a result of

impairment".

In the SR, the appellant reports that she was sent via ambulance to the hospital: November 17, 2010 for showing signs of kidney failure; November 25, 2010 with chest pains and an anxiety attack and December 2, 2010 for chest pain.

The ten copies of admission reports from the same medical clinic dated from 15 July through to and including 22 December, 2010 indicate various symptoms and prescription renewals.

The physician's letter refers to the appellant's visit regarding her "septal perforation".

The appellant gave the following oral testimony; medication makes her sick which often results in seeking medical attention, "frequently"; she can not take most medication and currently takes regular Tylenol for pain relief. Without the help of her roommate, she is not mobile and is unable to do any housework, laundry, shopping and cooking. She can spend from 5:00 am until 10:30 am in the bathroom tending to Personal Care. She cannot walk more than 1/2 block. She can't walk up the stairs from her basement suite to the front of the house where the roommate's truck is parked without the help of another person. She can't carry even one load of laundry. The appellant states that she is being followed by a Rheumatologist "monthly"; she has lost weight and muscle mass and she would benefit from the use of a cane and a scooter.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant is not eligible for designation as a PWD because she does not have a severe physical or mental impairment and her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods resulting in the need for 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 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.

The appellant's position is that she meets all eligibility criteria. Quoting *Hudson v. EAAT* (2009, BCSC 1461) the appellant's advocate emphasizes that "significant weight must be placed on the evidence of the appellant unless there is legitimate reason not to do so". Furthermore, the appellant's advocate argues that there are no requirements in the legislation to request the PP to measure how long or how much longer than typical the appellant takes for DLA or to provide a calculation regarding the occurrence of the appellant's symptoms and resulting need for support.

The Ministry's position is that the evidence does not establish the existence of a severe mental or physical impairment that, in the opinion of a prescribed professional, significantly restricts DLA or necessitates help with DLA.

Respecting the existence of a severe mental impairment, the ministry's position is that there is no information provided by the PP to indicate any mental impairment diagnosis. Evidence provided in the PP does not report any significant cognitive or emotional deficits in either the PR or AR. As evidence is absent regarding the confirmation of any mental impairment from a PP and not noted in either the PR or AR, it is not possible to confirm a mental impairment, severe or otherwise. As such, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established under section 2(2) of the EAPWDA.

Regarding the existence of a severe physical impairment, the panel finds that the new evidence from the PP reconfirms the appellant's diagnosis of Vasculitis and reports that she "has many symptoms that significantly restrict her from performing activities of daily living (ADL) and as a result of this restriction her disability should be described as severe in nature". It is stated that the appellant "is significantly restricted in terms of basic mobility, both inside and outside of her home" and that the appellant on recurring occasions "is unable to leave her home to walk any distance as a result of high fatigue and chronic pain. The PP adds that

the appellant "is most often in chronic pain and finds basic mobility to be an increasing challenge in her daily life". The PP states that in his professional medical opinion the appellant faces significant restriction in her ability to walk and that all basic mobility causes a significant amount of pain and takes significantly longer than the average individual to accomplish. Upon reviewing the evidence in the AR respecting mobility and physical ability, all aspects were noted to take significantly longer than typical. The PP adds that the appellant avoids the use of stairs whenever possible and cannot remain seated for extended periods of time as a result of chronic pain. Also, he reports that she is only able to stand for very short periods as a result of her symptoms. The panel finds that the above evidence which is consistent with the appellant's evidence, establishes limitations to physical functioning which are reasonably viewed as indicative of a severe physical impairment. Therefore, the panel finds that the ministry did not reasonably determine that a severe physical impairment has not been established under section 2(2) of the EAPWDA.

Regarding the degree to which the appellant's DLA are restricted, the panel finds that the evidence of the AR indicates the appellant is able to independently manage the majority of aspects of DLA which do not relate to mobility. However, the panel finds that the evidence of the PP is that the appellant is not independently able to manage several aspects (laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, and cooking). The PP adds that the appellant : "experiences fluctuating flu-like symptoms that restrict her ability to perform ADL's on a periodic and continuous basis day-in-and-day-out; and she experiences arthritic symptoms related to vasculitis, which cause significant pain" and reduce her ability "to carry and lift items on a continuous basis". The appellant's "recurring skin lesions which are very painful and serve to further reduce her capacity to attend to ADL". He indicates that she "requires continuous assistance with grocery shopping and various other errands that require lifting". Therefore, the panel finds that the evidence of the PP establishes that that the appellant is continuously restricted with the physical aspects of basic housekeeping, food preparation, cooking, shopping and with mobility indoors and outdoors. Additionally, the panel finds that the PP has established that these restrictions are continuous restrictions given the continual nature of the limitations to the appellant's physical functioning and the frequent recurrent nature of the specified DLA. Therefore, the panel finds that the ministry did not reasonably conclude that the appellant is not directly and significantly restricted either continuously or periodically for extended periods in her ability to perform DLA as required under section 2(2)(b)(i) of the EAPWDA.

The panel also finds that, as a direct and significant restriction with DLA has been established and the PP has indicated the need for some type of home support; the ministry did not reasonably determine that the evidence does not establish that, in the opinion of a prescribed professional, the significant help or supervision of another person, use of an assistive device or assistance animal is required to perform DLA as required under section 2(2)(b)(ii) of the EAPWDA.

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