

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 21, 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

A ministry observer was in attendance at the hearing with the appellant's consent.

The evidence before the ministry at reconsideration was a PWD application comprised of a Physician Report (PR), Assessor Report (AR) and Self-report (SR), a Medical Report – Persons with Persistent Multiple Barriers (MR- PPMB), the Request for Reconsideration, and a letter dated February 10, 2011.

In the PR, completed by the appellant's general practitioner since February 2007, the appellant is diagnosed with Hepatitis C, bipolar disorder, and hypothyroidism. Hepatitis C causes fatigue and decreases the amount of time per day the appellant can be productive and may get better or worse with treatment. Anxiety related to psychiatric problems "can be quite crippling." The appellant has always had persistent medical barriers to employment. Hypothyroidism has been treated "so should not be adding to fatigue." No medication has been prescribed which interferes with the ability to perform DLA. Regarding functional skills, the appellant is able to walk 1 to 2 blocks and climb 5+ steps unaided, lift 15 to 35 lbs, and has no limitations remaining seated or difficulties with communication. Significant deficits with cognitive and emotional function are reported for 2 of 11 specified aspects – emotional disturbance and motivation. Periodic restrictions with basic housework, daily shopping, and mobility outside the home are reported. No restrictions are reported for personal self care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances, and social functioning. Additional narrative is that the appellant is very fatigued which decreases her ability to concentrate etc.

In the AR, completed by the same general practitioner, the medical impairments impacting the appellant's ability to manage DLA are identified as hip pain, anxiety, and fatigue. The appellant's ability to communicate is reported as good for speaking, reading, hearing, and writing. All aspects of mobility and physical ability are managed independently (walking indoors and outdoors, climbing stairs, standing, lifting and carrying/holding) with narrative that the appellant has "less ability to climb stairs & walk if hip is acting up". Respecting cognitive and emotional functioning, no major impact on daily functioning is reported with a moderate impact reported for emotion and motivation, a minimal impact reported for attention/concentration and no impact reported for the remaining 11 listed aspects. Regarding DLA, all aspects of personal care, meals, paying rent and bills, medications as well as 3 of 5 aspects of shopping, 2 of 3 aspects of transportation, and 4 of 5 aspects of social functioning are managed independently. Periodic assistance is indicated for both aspects of basic housekeeping, 2 aspects of shopping (going to and from stores, carrying purchases home), and 1 aspect of social functioning (able to deal appropriately with unexpected demands) and the physician writes that the remaining aspect of transportation, using public transportation, is avoided due to anxiety. Good functioning with both immediate and extended social networks is reported with a recent decrease in level of functioning noted. Assistance is provided by family and friends and when asked what help is required but not available, the physician writes "currently not needed but disease progression may necessitate change." Physical and mental fatigue is the biggest deterrent to normal functioning.

In the SR dated August 4, 2010, prepared by an advocate with information supplied by the appellant, the appellant is reported to suffer from severe fatigue from Hepatitis C to the point of being bedridden and pain in her hips and lower body from degenerative arthritis so severe it frequently interferes with her ability to complete DLA. Pain from arthritis restricts the mobility needed to move around especially with tasks that require kneeling or bending down, including cleaning floors and bathtubs. Exhaustion and fatigue resulting from Hepatitis C and anxiety also limit her ability to accomplish daily tasks as she does not have the energy to complete tasks as simple as carrying laundry. Anxiety, depression, and fatigue also restrict her motivation to maintain her home and meal preparation becomes a daunting task as she is unable to stand for long periods of time without experiencing severe pain especially with such low energy levels. Anxiety limits her ability to run errands and cope with social interaction. Her son sometimes assists as she is unable to carry heavy groceries due to joint pain and severe fatigue. Additionally, she sometimes experiences severe anxiety or panic attacks

when in public and is unable to complete the task to which she was attending. At times, anxiety is so severe she is unable to get on the bus. If there are no seats available on the bus, standing becomes too painful and exhausting. Depression and anxiety make it difficult to plan ahead and make appropriate decisions. Socializing and interacting with others is difficult without becoming anxious or scared and limits her ability to function in unexpected or outside world situations.

In the Request for Reconsideration, the appellant writes that due to a great deal of depression the last 3 months she has not been able to do much of anything. During times of depression she is unable to perform the smallest of tasks within her home and cannot go outside. During manic periods, she can clean her home obsessively.

In the February 10, 2011 letter, the appellant reports prolonged periods of severe depression which can last form months on end and are compounded by extreme fatigue due to hepatitis C and anxiety. At these times, she reports being unable to manage and requiring assistance with cooking, shopping, cleaning, managing finances, hygiene, mobilization and attending appointments. A recent complete hysterectomy has caused further anxiety, pain, depression and extreme hormonal changes resulting in decreased mobility and mental stability. The appellant reports that her mental and physical health have deteriorated, since the initial PWD application, to the point where assistance with daily living is imperative.

In the MR- PPMB, completed by the same general practitioner who completed the PWD application, bipolar disorder is reported as the appellant's primary medical condition with Hepatitis C reported as a secondary medical condition. Restrictions specific to those medical conditions are described as "very fatigued" and "plagued with bouts of depression."

At the hearing, the appellant stated that the information provided by her advocate and her physician reflects functioning on a good day and that she only sees her doctor when she is doing "okay". She stated that she does not function 2 weeks a month and during that time does not move very much or leave her home. She is uncertain as to why osteoarthritis was not included as a diagnosed medical condition in the PWD application but its absence could reflect uncertainty as to how the pain from fibroids, which have since been surgically removed, contributed to her hip pain. In support of her appeal, the appellant submitted a March 26, 2011 psychiatry consult. The psychiatrist reports that the referring physician, the appellant's general practitioner, indicated that the appellant was not on medication at the time of the referral and was "currently stable". The general practitioner requested a review of newer mood stabilization medication. In the consult, the psychiatrist relays the appellant's accounting of her psychiatric history from childhood forward and reports that the appellant stated that her depression has been worse lately, with up to two episodes of four days of not being able to function each month and that she would have attacks of panic and anxiety often related to fears of falling into a depression again. The appellant reported that she could not remember when last able to sleep through the night. The appellant reported that she currently does some housekeeping and dog walking for people she knows. The psychiatrist's clinical impression is that the appellant gave an excellent account and has symptoms compatible with a chronic Major Depressive Disorder and that she might benefit from a further trial of antidepressant medication. The psychiatrist states he will refer her for follow-up in a Mood Disorders Service "especially in view of the possibility that she could be prescribed Interferon for her Hepatitis C." The psychiatrist gave permission for a copy of this assessment to be forwarded with the PWD application as he believes the appellant was a deserving candidate. The ministry objected to the admission of the psychiatry consult on the basis that it was not before the ministry at reconsideration. The panel admitted the new oral and written testimony provided by the appellant as evidence under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration.

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 severe fatigue from Hepatitis C can leave her bedridden and that severe pain from arthritis frequently impacts her ability to perform DLA thus establishing a severe physical impairment. The appellant also takes the position that her physician did not do a good job completing the PWD application and has provided sparse information in part due to the fact that the appellant only sees her physician when she is doing okay at which times the appellant does not give a good accounting of her bad times. The ministry's position is that the information provided by the appellant in conjunction with the physician's evidence respecting physical functional skills and independence with all aspects of mobility and physical ability does not establish a severe physical impairment.

The panel finds that a medical practitioner has diagnosed the appellant with Hepatitis C which results in fatigue and hypothyroidism which has been treated. Acting as assessor, the physician also identifies hip pain without diagnosing an associated medical condition. Respecting physical functioning, the physician reports that the appellant is able to walk 1 to 2 blocks and climb 5+ steps unaided, lift 15 to 35 lbs, and has no limitations remaining seated and that all aspects of physical mobility and ability are managed independently without any assistance although the appellant's ability to walk and climb stairs is lessened if she is experiencing hip pain. The physician provides no further detail as to either the frequency or degree of impact hip pain has on these aspects of physical functioning. Periodic assistance is indicated for both aspects of basic housekeeping and 2 aspects of shopping (going to and from stores, carrying purchases home) but no information is provided respecting the frequency or duration of the assistance required. The need for periodic assistance with 1 aspect of both transportation and social functioning is identified as relating to a mental rather than physical impairment. In the MR-PPMB, the appellant is described as being "very fatigued". The appellant's evidence is that severe fatigue from Hepatitis C can leave her bedridden and that arthritic pain can be so severe it frequently interferes with her ability to perform DLA. She also reports that she requires assistance carrying heavy groceries. Additionally, in the Request for Reconsideration the appellant reports that when in a manic

phase she can clean her home obsessively. In the March 26, 2011 psychiatric consult, the appellant is reported as having stated that she currently performs some housework and dog walking for people she knows.

The panel finds that the physician's evidence respecting the appellant's ability to walk, climb stairs, lift/carry, and remain seated and independently manage all aspects of mobility and physical ability as well as the physician's evidence that the appellant independently manages the vast majority of DLA independently was reasonably viewed by the ministry as not establishing a severe physical impairment. Furthermore, the panel finds that the appellant's evidence respecting her ability to manage the physical task of housecleaning when in a manic phase and her evidence that, as of March 26, 2011, she is able to perform housekeeping for other people and walk dogs does not support the existence of a severe physical impairment. Therefore, 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's position is that month's long bouts of severe depression leave her unable to function for two weeks a month and that anxiety restricts her ability to function outside of her home thus establishing a severe mental impairment. The ministry's position is that the evidence of the physician identifies no difficulties with communication, only a moderate impact on daily functioning in 2 areas, with all other areas either having minimal or no impact, and independence in the majority of areas of social functioning and thus does not establish a severe mental impairment.

The panel finds that the appellant's general practitioner has diagnosed the appellant with bipolar disorder and anxiety. Significant deficits are reported 2 aspects of cognitive and emotional function, emotional disturbance and motivation, with no deficit reported for the remaining 9 specified aspects. Emotion and motivation are both reported to have a moderate impact on daily functioning and attention/concentration has a minimal impact. The remaining 11 aspects of cognitive and emotional functioning are reported as having no impact on daily functioning. Periodic assistance is indicated for 1 of 5 aspects of social functioning, ability to deal appropriately with unexpected demands, and good functioning is reported with extended and immediate social networks, with a recent decrease in functioning reported for the latter. The most recent medical evidence, the March 26, 2011 psychiatric consultation, indicates that the appellant's general practitioner reported the appellant as "currently stable" when making the psychiatric referral. The psychiatrist's clinical impression is that the appellant has symptoms compatible with a chronic Major Depressive Disorder. The psychiatrist reports that the appellant might benefit from a trial of antidepressant medication and that there is a real likelihood that Interferon treatment for Hepatitis C would aggravate her depression. The appellant's evidence is that when experiencing depression she is unable to manage the smallest of tasks or leave her home. Additionally, anxiety restricts her ability to be in public, socialize, interact with others, plan, or make decisions.

The panel finds that the degree of impact on functioning reported by the appellant due to her mental impairment is not supported by the information provided by either her family physician or the psychiatrist. The evidence of the general practitioner is that, although there are significant deficits in 2 of the 11 listed areas of cognitive and emotional functioning, they have a moderate rather than major impact on daily functioning, and most aspects of cognitive and emotional function are reported to have no impact on daily functioning. Further, the physician has not identified any difficulties making decisions about personal activities, care or finances and indicates that 4 of 5 aspects of social functioning are managed independently with the 5<sup>th</sup> aspect requiring periodic assistance of unspecified frequency or duration. Additionally, the most recent medical evidence, the March 26, 2011, psychiatry consult, indicates that the appellant's general practitioner reported the appellant as being "currently stable" when making the psychiatric referral. The panel finds that the psychiatry consult indicates that the appellant has symptoms compatible with chronic Major Depressive Disorder but that the psychiatrist has provided no assessment of the appellant's functioning having instead relayed the appellant's description of her history and functioning. For these reasons, the panel 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 she meets the legislative criteria because her physical and mental impairments leave her unable to manage even the smallest of tasks within her home or leave her home for 2 weeks each month. The ministry's position is that, as the physician reports that the appellant independently manages 23/28 listed daily living activities and 4/5 aspects of social functioning and does not indicate whether the periodic assistance required for the remaining 5 aspects of DLA is for extended periods, significant restrictions to the appellant's DLA have not been established.

In considering the reasonableness of the ministry's decision respecting DLA restrictions, the panel notes that the legislation requires that the direct and significant restriction with DLA be in the opinion of a prescribed professional and that periodic restrictions be for extended periods. The panel finds that the evidence of the appellant's physician, a prescribed professional, is that the appellant independently manages all aspects of mobility, personal care, meals, paying rent and bills, medications as well as 3 of 5 aspects of shopping, 2 of 3 aspects of transportation, and 4 of 5 aspects of social functioning. Periodic assistance is indicated for both aspects of basic housekeeping, 2 aspects of shopping (going to and from stores, carrying purchases home), and 1 aspect of social functioning (able to deal appropriately with unexpected demands) and the physician writes that the remaining aspect of transportation, using public transportation, is avoided due to anxiety. Based on this evidence, the panel finds that a prescribed professional has identified restrictions with 6 of the 33 listed aspects of DLA, rather than 5 as argued by the ministry, as the panel accepts that the physician's narrative respecting the use of public transportation identifies a restriction although the corresponding box was not ticked. The panel finds that the physician has not provided any information as to how often or for what duration the periodic assistance with those 6 aspects of DLA is required. The panel finds that the psychiatry consult includes no information as to the appellant's ability to perform DLA. Based on the general practitioner's evidence that the appellant independently manages the vast majority of DLA independently and, in the absence of information establishing that the periodic assistance required for the remaining aspects of DLA is for extended periods, the panel finds that the ministry reasonably determined that the appellant is not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods in her ability to perform DLA as required under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant argues that she requires assistance with DLA due to fatigue from Hepatitis C and due to fatigue and lack of motivation due to depression. The ministry argues that it has not been established that DLA are significantly restricted and therefore it cannot be determined that significant help is required from other persons.

The panel finds that the ministry reasonably determined that, as it has not been established that DLA are directly and significantly restricted in the opinion of a prescribed professional, it cannot be determined that help is required under section 2(2)(b)(ii) of the EAPWDA.

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