

## PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 4, 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) and Assessor Report (AR)) and the Request for Reconsideration which included an undated letter from the appellant and two physician's letters dated November 9<sup>th</sup> and 11<sup>th</sup> of 2010.

In the PR dated August 3, 2010, the appellant's general practitioner of 6 years provides the following information. Diagnosed medical conditions are anxiety disorder and major depression. The appellant is unable to maintain a job due to lack of motivation, concentration and poor energy. The appellant has a severely autistic child who requires an immense amount of attention which contributes to the appellant's anxiety and depression. The appellant's impairment is likely to last for more than 2 years with narrative that "impairment might improve with medication". Regarding Functional Skills, the appellant is able to walk 4+ blocks and climb 5+ steps unaided and has no limitations lifting or remaining seated and no difficulties with communication; significant deficits are reported for 5 of 11 specified aspects of cognitive and emotional function (executive, memory, emotional disturbance, motivation, and attention or sustained concentration).

In the AR, completed by the same general practitioner on August 4, 2010, the appellant's Ability to Communicate is reported as good and she is independent with all aspects of Mobility and Physical Ability. Respecting Cognitive and Emotional Functioning, a major impact on daily functioning is reported in the areas of emotion and motivation; a moderate impact is reported for attention/concentration, executive function, and memory, with either minimal or no impact reported for the remaining 8 areas; no narrative is provided. Regarding DLA, the appellant independently manages all aspects of personal care, shopping, paying rent and bills, medications, transportation, and social functioning (marginal functioning is reported with both immediate and extended social networks). Periodic assistance is indicated for basic housekeeping ("sometimes cannot get out of bed to do these – family does it") and meals ("might need help from her dad to do the cooking"). "Due to lack of motivation and energy [the appellant] is unable (some days) to cook/do basic housekeeping". "Her father assist[s] with this sometimes".

In her undated letter submitted with the Request for Reconsideration, the appellant writes that she is currently under a physician's care for major depression and anxiety. Medications she must take cause extreme fatigue and there are many days she requires assistance with her daily activities which is provided by her father and a very small network of friends. She finds it impossible to make ends meet as she is unable to work.

In letters dated November 9<sup>th</sup> and 11<sup>th</sup>, 2010, the physician who completed the PR and AR confirms the diagnoses of major depressive disorder and anxiety. The physician writes that the appellant is unable to perform any job due to very poor concentration, lack of motivation, and anxiety. There are days when the appellant cannot get out of bed and is helped by her father. The appellant has a child with severe autism and looking after him takes up all of the appellant's time and causes significant anxiety.

On appeal, the appellant submitted a February 10, 2011 letter from her general practitioner who writes that she and the appellant reviewed her physical and mental abilities in full detail. The physician provides the following information. New antidepressant medication has been prescribed as the past medication has not helped the depression and left the appellant feeling foggy and fuzzy, unable to concentrate, and slightly confused for the first couple of hours after taking the medication. The appellant has "good days and bad days". On bad days, she has poor motivation, energy, and planning skills, is unable to get out of bed, and has poor energy or motivation to do anything. On bad days, the appellant's father, with whom the appellant resides, helps prepare meals, feed and clothe the appellant's children, clean the house, fill prescriptions and do household shopping. Periodically, the appellant requires assistance with DLA. The appellant has very poor sleep and has been prescribed medication which seems to help her get some rest at night. The appellant mentioned that she also has some learning disabilities. She needs help from counselors or people at the bank to simplify instructions as

she does not really comprehend or understand a lot of things. The appellant can be fairly emotional and, on a bad day, short tempered and fairly aggressive. She has disorganized thinking and often needs assistance from her father to be able to organize the household. The appellant "occasionally" needs help from her father with meals, managing personal finances, and shopping for personal needs as well as prompting to take medication. On bad days, she is unable to communicate or interact with others effectively and is socially withdrawn. The appellant has "moderate to severe" depression and "on some days is severely depressed and unable to function and needs assistance" with DLA like meal preparation, shopping, cleaning and attending to her children. The depression has a major impact on her life and she is unable to maintain a job at this present moment. The panel admitted the physician's letter 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. The ministry did not object to the admission of the new evidence.

At the hearing, the appellant provided the following oral testimony. She requires full-time help due to her depression and anxiety as she only has 2-3 good days per month. She has been on new antidepressant medication for 2-3 weeks which is not working yet and makes her tired. She needs to have things explained to her including banking and reading paperwork.

The ministry provided no additional evidence at the hearing.

## 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.

Regarding the existence of a severe physical impairment, the panel finds that, in the absence of a diagnosed physical condition or any limitations in terms of physical functional skills and mobility and physical ability, 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 she has a severe mental impairment as evidenced by the fact that she only has about 3 good days a month and requires full-time help with DLA and by the physician's February 10, 2011 letter stating that she, the appellant, has moderate to severe clinical depression. The ministry's position is that a severe mental impairment has not been established as the appellant's physician reports good communication, minimal or no impact on daily functioning for 8 of 13 indicators, and that most DLA are completed independently. The panel finds that a medical practitioner has diagnosed the appellant with moderate to severe depression and anxiety disorder with significant deficits respecting cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation and attention/sustained concentration with a major impact identified for 2 of 13 specified areas of daily functioning, emotion and motivation. Although the appellant has advised her physician that she has learning disabilities, no confirming diagnosis by a medical practitioner is provided. The appellant's physician reports good communication and the ability to manage DLA except on bad days. The physician does not indicate either the frequency or duration of bad days but, rather, describes the need for assistance as periodic, occasional, and writes that the appellant is severely depressed "on some days". The panel finds that, while the evidence of the appellant and physician establishes some limitations to functioning due to a mental impairment, the physician's evidence is that the appellant's cognitive and emotional deficits have a major impact on daily functioning in only 2 of 13 specified areas. Further, the physician reports that DLA are independently managed with the exception of the need for periodic assistance with some DLA described as occasional. The panel also notes that employability is not a criterion upon which PWD eligibility is based. The

panel has placed considerable reliance on the information provided by the appellant's physician given the overall consistency of the information provided in the PR and AR completed in August 2010 with that in the February 10, 2011 letter and as the February 10, 2011 letter reflects a recent assessment of the appellant's medical condition by her health care professional of over 6 years. Therefore, in light of the above evidence of the appellant's physician, 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 appellant's ability to manage DLA, the appellant's position is that, with the exception of approximately 3 days a month, she requires full-time assistance to manage DLA and is therefore directly and significantly restricted in her ability to manage DLA continuously. The ministry's position is that the evidence of the prescribed professional in the PWD application and letters of November 2010 does not establish a direct and significant restriction with DLA. Rather, the prescribed professional's evidence establishes that the appellant manages the majority of DLA completely independently with the exception of needing periodic assistance of an unspecified frequency or duration described as sometimes cannot get out of bed to manage housekeeping and might require help with meals. As section 2(2)(b) of the EAPWDA requires that a prescribed professional be of the opinion that there is a direct and significant restriction, either continuously or periodically for extended periods, the panel has relied on the evidence of the appellant's physician in the PWD application and letters of November 2010 and February 10, 2011. The panel finds that the evidence of the prescribed professional is that the appellant independently manages all DLA except on what are referred to as "bad days" when periodic assistance is required for basic housekeeping, shopping, meals, and management of medications and personal finances. The physician has not specified how often the appellant has bad days nor indicated that the bad days continue for extended periods. Narrative describing the periodic assistance in the AR is that the appellant sometimes cannot get out of bed to perform housekeeping and that the appellant might need help from her father with cooking. In the February 10, 2011 letter, while the physician writes that the appellant often needs assistance to be able to organize the household, the physician repeatedly identifies the need for assistance as relating to bad days describing the appellant's need for assistance as periodic and occasional and indicating that the appellant is severely depressed on "some days". Based on the evidence of the physician, the panel finds that the ministry reasonably determined that, in the opinion of a prescribed professional, a direct and significant continuous restriction with DLA was not established and that, although periodic restrictions are reported, the evidence does not establish a direct and significant periodic restriction for extended periods as required under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant's position is that she requires the significant assistance of another person to manage DLA due to being severely impaired by depression and anxiety on all but approximately 3 days per month. The ministry's position is that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. 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 as a result of said restrictions and that the criterion of section 2(2)(b)(ii) of the EAPWDA was not met.

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