

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated December 19, 2008 which held that the appellant did not meet all of the legislative criteria required for designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry concluded:

- that the appellant does not have a severe mental or physical impairment ,
- that the information from a prescribed professional did not confirm that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods and
- as she is not significantly restricted with daily living activities, it cannot be determined that she requires significant help or supervision of another person, the use of an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

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

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the Ministry was:

- An application for PWD designation dated September 19, 2008 with the Physician and Assessor Report completed by the same doctor and dated October 1, 2008.
- A statement written by the appellant in her Request for Reconsideration. She states that her back pain affects every area of her life; it restricts her ability to stand, sit or be in one position for more than 2 minutes. She has to find ways to get her back to relax, for example by having her sons rub the muscles. She notes working is impossible and she manages her household chores by having help from one son and daughter-in-law; she notes her landlord helps her also. She states that although her back is her major obstacle, she has various other elements affecting her health which she has stated previously. She states she needs disability assistance for support.

In the Application for PWD designation, in the Physician's report, the doctor reports that the appellant has had severe degenerative disc disease(DDD) with nerve impingement for 30 years which causes her difficulty with sitting, standing and lifting; she is in recovery for substance abuse for a few years and has Hepatitis B and C. The doctor does not foresee recovery. In functional skills the doctor notes the appellant can walk 1-2 blocks, climb 5+ steps with rest stops, can lift 15-35lbs and remain seated for 1 to 2 hours. He notes no significant defects with cognitive or emotional functions. In daily living activities, the doctor notes the appellant is restricted in meal preparation, basic housework, daily shopping and mobility inside and outside the home. In these restricted areas, he notes she needs periodic help and needs frequent breaks to do minimal housework, chores, dishes etc. In explaining the degree of restriction, the doctor states that the appellant needs help in lifting more than 25 lbs, she can walk, bend or sit with breaks and assistance and she needs her daughter-in-law's help. In the Assessment Report, the doctor notes her physical impairment to be chronic low back pain with impairment in lifting, sitting, standing walking and weakness in legs. The doctor notes that the appellant needs periodic assistance, stating she can walk more than 1 block, stand and sit for more than 1 hour and lift and hold up to 25 lbs. In her daily living activities in Part C, the doctor notes the appellant is independent in her personal care but takes significantly longer in bathing, transferring in and out of bed and a chair. The doctor notes she needs periodic help with basic housework, food preparation, cooking and going to and from stores and that she lives with family and family members help her. The doctor states that she takes significantly longer getting into and out of a vehicle and using public transit.

New Evidence: The appellant submitted a checklist listing medical conditions and restrictions which was signed by her doctor on January 28, 2009. The ministry objected to the acceptance of this as the new information contains a diagnosis of new conditions of carpal tunnel syndrome, cognitive and emotional deficits and the use of several assistive devices. The Panel found this evidence was admissible under section 22(4) of the *Employment and Assistance Act (EAA)*, as it was information in support of the information that were before the minister when the Reconsideration Decision was made. Although the checklist contained two new medical problems, it was completed several months after the original assessment and the appellant's condition may have degenerated; the information is also generally in support of her application and gives further details of her medical conditions and restrictions. The information notes that the appellant can walk less than 1 block, sit only for 30 minutes, needs a railing to climb stairs, is unable to lift and carry, is unable to shower approximately twice a week, needs to use a counter to get on and off the toilet, is unable to bend so can't do laundry, has to vacuum sitting down, and is unable to prepare meals independently. It notes she has daily assistance from family and friends to do housework, shop and cook. She uses an electric scooter and has been prescribed a back brace, although it does not help. The information also notes that depression affects her motivation.

The Panel finds as fact that the appellant has DDD, is in recovery for substance abuse and has Hepatitis B and C and that her physical impairment is primarily chronic low back pain. The medical evidence is somewhat contradictory in terms of how this affects her functional skills; however the Panel accepts the latest medical information on her condition which states that she can walk less than 1 block, sit only for 30 minutes, needs a railing to climb stairs, is unable to lift and carry, is unable to shower approximately twice a week, needs to use a counter to get on and off the toilet, is unable to bend so can't do laundry, has to vacuum sitting down, and is unable to prepare meals independently. The Panel accepts that the appellant needs daily, continuous assistance from family and friends to do housework, shop and cook and needs an electric scooter to access banking. The Panel accepts that depression affects the appellant's motivation.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is whether the Ministry reasonably concluded that the appellant does not meet the test to be designated as a PWD under section 2 of the EAPWD Act because :

- the appellant does not have a severe mental or physical impairment ,
- that, in the opinion of a prescribed professional, her daily living activities are not directly and significantly restricted either continuously or periodically for extended periods and
- that as she is not significantly restricted with daily living activities, it cannot be determined that she requires significant help or supervision of another person, the use of an assistive device or the services of an assistance animal to perform those activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Ministry must be satisfied that the person is over 18, has a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to continue for at least 2 years and, that in the opinion of a prescribed professional directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWDR defines "daily living activities" in relation to persons who have a severe physical or mental impairment.

The ministry acknowledges that the appellant is over 18 years of age and that her doctor confirms that her conditions are likely to continue for at least two years. The ministry contends that the medical information does not establish that the appellant has a severe mental or physical impairment that significantly restricts her ability to perform her daily living activities and she does not need significant help to perform these activities.

The appellant contends that she meets the criteria for PWD designation because she has a severe physical impairment that directly and significantly restricts her ability to perform her daily living activities.

Based on the latest medical information detailing the appellant's medical condition and restrictions, the Panel found it unreasonable that the ministry concluded that the appellant does not have a severe mental or physical impairment. The doctor notes her severe DDD causes an impairment of chronic low back pain with impairment in lifting, sitting, standing, walking and weakness in legs. Because of this impairment, the doctor notes that she requires continuous assistance to do basic household tasks as she cannot cook, do laundry, go shopping, or lift and has to sit even while vacuuming. The Panel concluded that the doctor's information indicates that the appellant has severe DDD and other medical conditions and that this results in the appellant having a severe physical impairment.

The Panel also found that based on the latest medical information, it was unreasonable for the ministry to conclude that the appellant is not significantly restricted in performing her daily living activities. The doctor describes the appellant as needing continuous help to perform most of her household tasks such as cooking, doing laundry, shopping and lifting and carrying. He states she has to sit even while vacuuming and cannot shower approximately two days a week. He describes her as having to lie down for up to 3 hours a day to alleviate the pain. The Panel found that the medical information indicates that the appellant is directly and significantly restricted in her daily living activities. Since she is directly and significantly restricted, the Panel found that it was unreasonable for the Ministry to conclude that it could not be determined that the appellant required significant help. In fact, the medical information is that the appellant needs significant daily continuous help from other persons and has to use assistive devices such as a scooter.

The Panel concluded that it was unreasonable for the Ministry to find that the appellant does not meet the legislative criteria for PWD designation as required by *EAPWDA*, section 2. The Panel found that the Reconsideration Decision is not supported by the evidence and rescinds the Reconsideration Decision.