

PART C – DECISION UNDER APPEAL

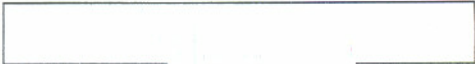
(State the reconsideration decision)

1. The Reconsideration Decision of February 20, 2009 is the decision under appeal.
2. Citing sections 2(2) and 2(3) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), the ministry denied the appellant's request to be designated a Person with Disabilities (PWD) as the ministry found that, though the minister was satisfied at reconsideration that her mental disability was severe, the appellant had not satisfied the ministry that her physical impairment is severe, and that her daily living activities are directly and significantly restricted either continuously or periodically for extended periods. The ministry therefore also found that, as she was not significantly restricted in her daily living activities, it could not be determined that the appellant requires significant help or supervision of another person to perform them.

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

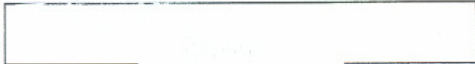


PART E – SUMMARY OF FACTS

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).

1. In denying the appellant's request, the information before the ministry was that:
 - a. On December 23, 2008, the appellant submitted an application for PWD designation.
 - b. On January 20, 2009, the ministry denied her application.
 - c. On February 16, 2008, the appellant submitted a Request for Reconsideration adding a two-page form, authored by her advocate and completed by her physician that provided more details about her condition.
2. On February 20, 2009, the ministry completed its review of her Request for Reconsideration, confirming the ministry's decision to deny her request for the PWD designation. On February 27, 2009, the appellant submitted a Notice of Appeal to the Employment and Assistance Appeal Tribunal.
3. At the hearing, the appellant's advocate submitted a written summary of the appellant's argument and a form letter created by the advocate and signed by the appellant's general practitioner on March 10, 2009. Both submissions were admitted under section 22(4) of the Employment and Assistance Act as information in support of information previously before the ministry. No objections were raised.
4. The appellant and her advocate provided evidence that:
 - a. The ministry has reported in the reconsideration decision that they are satisfied that the appellant has a severe mental impairment.
 - b. The appellant's physician confirmed in the form letter of February 14, 2009 that she is significantly impaired in her daily living activities including managing self-grooming, groceries, preparation of meals, keeping her home clean. Though the physician initially characterized the degree of her restrictions as moderately severe, the physician clarified in the form letter of March 10, 2009 that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.
 - c. The appellant receives assistance from her son, friends and neighbours but expressed avoiding asking for it as much as possible. Her physician in the form letter of March 10, 2009 confirmed that the appellant requires significant help or supervision of another person to perform daily living activities as restricted by her impairment.
5. The ministry stated that the evidence before it prior to the March 10, 2009 form letter from her physician had generally characterized the impact on her daily living activities as moderate. The appellant's advocate acknowledged this confusion.



PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

1. The issue in this case is the reasonableness of the ministry's decision to deny the appellant's request for the PWD designation on the basis that the appellant's severe mental impairment does not directly and significantly restrict her daily living activities and that it couldn't be determined if she requires help with her daily living activities as a result of these restrictions.
2. Section 2 of the EAPWDA states that the ministry may designate a person who has reached 18 years of age as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that is likely to continue for at least two years, 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 and that as a result of those restrictions, the person requires help to perform those activities.
3. The ministry argues that the appellant's medical practitioner had not satisfied the ministry that her physical impairment is severe, though at reconsideration, the minister was satisfied that her mental impairment was severe. The ministry had not been satisfied that her daily living activities are directly and significantly restricted either continuously or periodically for extended periods, and that the appellant requires significant help or supervision as a direct result of those restrictions. The ministry stated that the appellant's physician had provided additional information in support of information previously before the ministry that appears to clarify that her daily living activities are not merely moderately impacted.
4. The appellant argues that her mental impairment is severe, that she is significantly restricted in her daily living activities periodically for extended periods and that she requires significant help or supervision from her son, neighbours and family, as most recently acknowledged by her general practitioner.
5. The panel finds that the appellant's physician has clarified in the appellant's initial application, in the form letter of February 14, 2009 and the most recent form letter of March 10, 2009 that the appellant's daily living activities are directly and significantly restricted periodically for extended periods and that she requires the significant help of other people in performing her daily living activities.

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