

PART C – DECISION UNDER APPEAL

The Reconsideration Decision dated June 15, 2009 denied the Appellant's application for designation as a Person with Disabilities (PWD). The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWD) namely, the following criteria;

The minister is not satisfied that the Appellant has a severe mental or physical impairment;

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

It cannot be determined that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, s. 2
Employment and Assistance for Persons with Disabilities Regulation , s. 2

PART E – SUMMARY OF FACTS

In the PWD application the Appellant is diagnosed as suffering from chronic back pain and asthma. The Panel reviewed the Appeal Record which included administrative information and the following:

- Notice of Appeal dated June 19 , 2009
- Reconsideration Decision dated June 15, 2009;
- Appellant's application form;
- Physicians Report dated March 31, 2009
- Assessor's Report dated March 31 , 2009
- Ministry's PWD case profile sheet

The Appellant stated that the decision was incorrect because her physical impairment was severe and the doctor so stated, that she was significantly restricted in her daily living activities and she uses assistive devices for mobility and obtains significant assistance from others every day.

The Appellant introduced a letter dated July 10 2009 from her doctor that was accepted into evidence by the Panel in support of information and records that were before the minister when the decision was being made, pursuant to s. 22(4) of the EAA.

In the letter of July 10, 2009 the Doctor states that he would disagree with the Ministry's conclusion that the Appellant's daily living activities are not restricted. He wrote "she has trouble sitting and standing and can only walk short distances. She also has trouble bending and lifting and climbing stairs". This opinion was corroborated by the Appellant who described how she utilized a walker for mobility, and that she was unable to manage her daily living activities without the help of two neighbours who attended on her every day. She states that she needs help carrying, lifting, and to undress to shower. Her neighbours do her basic housework, laundry, and walk beside her in the morning if she wants to go outside. She is unable to see very far due to cataracts. She states that she can not walk anywhere without her walker and without frequent rests. The Advocate stated that the blocks that the Appellant walks are only 250 ' long and the Appellant stated it could take her 20 minutes to walk 1-2 blocks with her walker and the help of her friends.

The Ministry stated in the Reconsideration Decision that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD Act and the reason for the rejection of his application was that the Ministry was not satisfied that three of the criteria were satisfied. The Ministry was satisfied that the Appellant met the two criteria of age and duration. She did not meet the criteria of showing that the impairment was severe as the basic functional skills reported by her doctor were that she was able to walk 2-4 blocks and climb 2-5 stairs unaided, lift 2 to 7Kgs and remain seated for 1-2 hours and that the Appellant is independent walking indoors and standing.

The Ministry stated that she did not meet the criteria that she was significantly restricted from performing her daily living activities as the prescribed professional had not stated the frequency, duration and nature of help required to perform daily living activities and that the Doctor indicates that the appellant is able to independently manage most of her daily living activities.

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The Ministry stated that the information provided does not establish that the Appellant requires an assistive device, the services of an assistance animal or significant help or supervision from another person with daily living activities that are significantly restricted.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Sec 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act. The legislation states:

"2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal. "

The Ministry states that the Appellant has met the criteria of age and duration but has not met the remaining three criteria of severity of a mental or physical impairment, significant and direct restrictions to daily living activities or lastly significant help required, services of an assistance animal, although she does use an assistive device for some daily living activities.

The Ministry's position is that the Appellant did not qualify for PWD because the minister was not satisfied that the Appellant's impairment was severe and not satisfied that a prescribed professional provided the opinion that the appellant was significantly and directly restricted from performing her daily living activities.

The Appellant's position is that the decision was incorrect because her physical impairment was severe as the doctor so stated, and that she was significantly restricted in her daily living activities , and she uses assistive devices for mobility, and obtains significant assistance from others every day.

The Panel found that the medical evidence supported the Appellant's application. The Doctor stated an opinion that the Appellant had a severe physical impairment and therefore she does meet the criteria for severity. This opinion is found in Part C of the Physician's Report (PR) and Part B of the Assessor's Report where he specifically refers to her condition as severe.

For the criteria of being directly and significantly restricted in performing her daily living activities the Panel finds that the Doctor stated that the Appellant required either periodic or continuous assistance in 5 of 7 categories of daily living activities set out in Part C of the AR. In one other he marked her as requiring an assistive device and fully independent in the last category of Paying Rent and Bills. The Doctor also added many comments as to the nature of the difficulty, extended times required and help required. In addition, the prescribed professional's opinion letter of July 10, 2009 supports the position that the Appellant is directly and significantly restricted from performing her daily living activities either continuously or periodically for extended periods.

For the criteria of help required the Doctor's evidence is that the Appellant requires an assistive device for mobility. He remarks in Part C of the Assessor's Report that she requires assistance for food preparation, housekeeping, getting in out of shower, and picking up prescriptions . This evidence is corroborated by the Appellant's evidence that she requires help everyday for many hours a day. She is grateful that she has two close neighbours in her apartment building that help her and check on her every day. She reports that she cannot walk outside without their assistance for the additional reason that she cannot see the road due to her poor vision. The doctor also reports that she needs a cane. He states in Part B of the Functional Skills in the PR that she always uses a railing to climb stairs. The Panel finds that she meets the criteria of help required.

For these reasons the Panel finds that the Reconsideration Decision was not reasonably supported by the evidence and rescinds the decision.