

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The reconsideration decision made January 09 2009 was to deny the Persons with Disabilities (PWD) designation on the basis that the appellant :

- did not have a severe physical or mental impairment
- impairment did not significantly restrict the ability to perform daily living activities
- did not require help or supervision of another person to perform daily living activities restricted by impairment .

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 (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 :

- PWD Application dated October 31 2008 which set out a description of the appellant's condition
- Assessor's Report completed by the appellant's physician dated October 28 2008 addressing, amongst other things, the level of impairment and impact on daily living activities .
- Physician's Report completed by the appellant's doctor dated October 28 2008 containing, amongst other things, the various diagnoses , health history , and degree of impairment .
- Adjudicator's decision to deny the PWD designation dated November 26 2008 which included an explanation of the decision .

The appellant provided new evidence at the hearing in the form of two documents both authored by the appellant's doctor which were dated Sept 23 2008 and Jan 19 2009 . The documents referenced the appellant's ongoing cluster headaches and osteoarthritis in the back and were therefore considered to be evidence in support of the appellant's application as specified in EAA Section 22(4) , and were admitted into evidence . The ministry consented to the acceptance of the new evidence .The most recent document confirmed the appellant has increased pains and is unable to work .

The appellant provided evidence as follows :

- her cluster headaches occur off and on during the course of a year and are for up to 3 weeks to 3 months duration . The headaches are debilitating and the appellant can't do anything , even sleep properly. On average the headaches occur about 50% of the time during a year. There are no medications that can prevent , control or cure a cluster headache .
- The osteoporosis in the back causes such pain that the appellant has trouble standing to do dishes , she can not walk 4 blocks to the bus stop and she needs help from others to do household chores like clean the toilet , make the bed, wash the floor, do laundry and do yard work .
- The appellant receives help from her sister, daughter and a friend . It is the friend who takes the appellant to the store to do shopping in his car. After 15 minutes of shopping the appellant has to stop and go home due to the back pain .
- The appellant was able to give evidence at hearing because she had been free of a cluster headache for about a week . Before that the appellant had had a cluster headache for 3 months straight .

The appellant's friend attended the hearing to provide support for the appellant , but he did not give evidence .

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be decided is whether the ministry's decision to deny PWD status to the appellant was a reasonable one. The legislative criteria for the PWD designation is found in EAPWDA Section 2 as follows:

- 1.) the person is 18 years of age
- 2.) the person has a severe physical or mental condition that is confirmed by a physician to last for at least two years
- 3.) in the opinion of a prescribed professional the impairment directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods
- 4.) as a result of restrictions the person requires help to perform those daily living activities

The ministry agrees the appellant has met the first condition of entitlement but argues the remaining three conditions have not been met. Specifically, the ministry's position is that that neither the physician's report or the assessor's report provide enough detail to support a ruling in the appellant's favour in areas of the degree of impairment or the level of restriction of daily living activities.

The appellant argued the second condition was met because not only did the doctor say in his report dated Nov 10 2008 that the medical conditions would last 2 years but also these conditions were severe. In health history the doctor says: " she has severe cluster headaches which disable her for weeks at a time; she has chronic mechanical back pain causing problems with standing and sitting ".

The appellant argued the third condition was met because while the assessor's report dated Nov 10 2008 did show some areas of daily living activities to be independent, many of the most important areas such as basic housekeeping, shopping, meal preparation and bill paying were impaired in that they took significantly longer. Indeed based on the new evidence the appellant is not considered employable.

On the final point the appellant argued there was clear evidence she requires help because the assessor's report confirms the back pain limits such things involving mobility, there is poor cognitive functioning due to alcoholism, and she needs periodic supportive help for social decisions. According to the assessor's report the appellant requires continuous support to deal appropriately with unexpected demands. A confirmation that help is, in fact, provided is also contained in the assessor's report.

The panel finds the legislative conditions to obtaining PWD status for the appellant have all been met because the physician's report, the assessor's report and the new evidence all contain sufficient detail to establish entitlement.

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