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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision, dated March 6, 2009, which denied the Appellant the Persons with Disabilities designation.

The ministry's reconsideration decision held that while the Appellant did meet the age requirement of being 18 years and her doctor confirmed her impairment would last at least 2 years, the minister was not satisfied that the Appellant had a severe physical or mental impairment, that the Appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods and that the Appellant requires assistance for daily living activities from other persons or from assistive devices

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2
Employment and Assistance for Persons with Disabilities Regulation 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

1. The Appellant's Employment and Assistance Request for Reconsideration, including the Appellant's statement.
2. The Appellant's Persons with Disabilities (PWD) Application, with the self report not completed
3. The Physician's Report completed by the physician.
4. The Assessor's Report completed by the physician.
5. The Appellant's statement of October 21, 2008.
6. A letter from the physician dated July 17/08 indicating that the Appellant was unable to work due to a medical condition – indefinitely.

The Appellant's further evidence is as follows:

1. The Appellant's written submission of April 17, 2009.
2. The Appellant's statement date stamped March 24, 2009.

The Appellant states that she has had cancer in the past, knows it has returned, has seen the doctor but told him not to tell her if it has returned. She has pains she describes as in the lung area and in the breast area. Her breathing is getting worse and feels too weak to walk too far or to take stairs.

In the Appellant's letter dated October 21, 2008, she indicates that she was diagnosed with breast cancer in 2000, underwent treatment and has been cancer free since. However, sometime prior to the date of the letter, she noticed severe pain in her lung area and sensed lumps, went to the doctor, requested tests but told the doctor she didn't want to know if her cancer has returned as she didn't want to go through what she did last time.

In the Appellant's submission she says she has pain and sweats when doing work such as raking, extreme asthma which limits activities such as lifting, and osteoporosis in her back, shoulders, elbow and knees, with the worst pain in her lower back. She states she knows something is growing in her lung area but has told her doctor not to tell her anything.

In the Appellant's submission she indicates that the pain is more prevalent, and that activity such as washing her truck brings on the knife stabbing type of pain.

The Physician's Report, indicates that the Appellant was diagnosed with breast cancer in 2000 and with asthma in 1980. The Report indicates that after chemo and radiotherapy for breast cancer, asthma is worse. This statement is followed with a question mark which seems to indicate the therapy may have worsened the asthma. There is also the diagnosis of pneumonitis.

ATTACH EXTRA PAGES IF NECESSARY

The doctor says the Appellant cannot do strenuous work as she gets short of breath, and that she cannot work. The Appellant takes flumocora and ventolin and advair inhalers. The Appellant's condition is said to be permanent.

Under Functional Skills, the Appellant can walk 4 plus blocks, 5 plus steps, is restricted to lifting 2 to 7 Kg., and has no restrictions on remaining seated.

Under Daily Living Activities, the Physician indicates that no daily living activities are restricted.

In the Assessor's Report the mental or physical impairment is described as tiredness, lack of strength and shortness of breath at times. The Appellant is described as good in her ability to communicate, and independent in her mobility and physical ability. The Appellant is described as independent in all personal care, basic housekeeping and shopping daily activities. She is also described as independent in daily living activities involving meals, paying rent and bills, medications, and transportation. The Assessor indicates that the Appellant does not receive help from other people or use assistive devices or animals to perform daily living activities.

The panel finds as fact:

1. The physician has diagnosed breast cancer (2000) and mild asthma, and indicates that the asthma may have become worse, or pneumonitis may have occurred, after breast cancer treatment.
2. The physician indicates that the Appellant cannot do strenuous work; that she has tiredness, lack of strength and shortness of breath at times.
3. The Appellant is assessed as independent in all daily living activities.
4. The Appellant's condition has an impact on only one functional skill: she is restricted to lifting 2 to 7 kilograms.
5. The Appellant is experiencing pain in the lung and/or breast area, brought on by certain activities.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is the reasonableness of the ministry's decision to deny the Appellant Persons with Disabilities (PWD) designation.

The legislation (Employment and Assistance for Persons with Disabilities Act (EAPWD, section 2(2)) provides that the minister may designate a person who has reached 18 years of age as a person with disabilities if the minister is satisfied 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 persons ability to perform daily living activities either continuously, or periodically for extended periods, and
 - (ii) as a result of those restrictions , the person requires help to perform those activities.

In EAPWD Act, section 2(3) it is stated that for the purposes of subsection (2) a person requires help in relation to a daily living activity if, in order to perform it, the person requires an assistive device or the significant help or supervision of another person, or the services of an assistance animal.

The Ministry's position is that the Appellant meets the age requirement and it is confirmed that the impairment will last at least 2 years. The Ministry argues that the Appellant does not have a severe impairment, that the performance of her daily living activities are not directly and significantly restricted either continuously, or periodically for extended periods, and that, as a result of restrictions, the Appellant does not require the help of another person, assistive devise or assistance animal. The Ministry's position is also that the Appellant's written submission indicating that she has been identified with osteoporosis, now has extreme asthma, and that she knows something is grown in her lung area, should not be relied upon because these conditions have not been confirmed by a prescribed professional.

The Appellant's position is that she is in pain, albeit pain that comes and goes with certain activities, identified activities being raking her lawn and washing her truck. Her position is further that she has extreme asthma which limits certain activities, lifting being the most restricted. Her position is further that she has osteoporosis, low back pain and senses that something is growing in her lungs.

The panel finds that the only current diagnosis is mild asthma. Other symptoms are mentioned in the Physician's and Assessor's Reports, but the cause is not established. Because the diagnosed impairment is mild, and because the daily living activities are not impacted, and the only functional impairment is a restriction to lifting 2 to 7 kilograms, the Ministry's decision that there was not a severe physical impairment was reasonably supported by the evidence.

The Assessor's Report indicates that all the regulatory daily living activities are performed independently. Therefore, the panel finds the Ministry's decision that the Appellant's performance of her daily living activities is not directly and significantly restricted is reasonably supported by the evidence.

ATTACH EXTRA PAGES IF NECESSARY

The Assessor's Report indicates that the Appellant does not receive help with daily living activities from other persons, assistive devices, or an assistance animal. Therefore, the panel finds that Ministry's decision that the Appellant does not require help in the performance of her daily living activities was reasonably supported by the evidence.

The panel confirms the Ministry's Reconsideration Decision as reasonably supported by the evidence.