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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

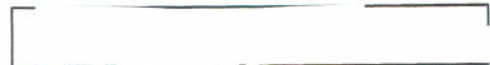
In the reconsideration decision of February 16, 2009, the appellant was denied status as a person with disabilities (PWD) because a medical practitioner had not confirmed that her impairment would last at least 2 years, the ministry found that she did not have a severe mental or physical impairment, her impairment did not directly and significantly restrict her ability to perform daily living activities and she did not require the significant help or supervision of another person to perform daily living activities.

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 reconsideration officer consisted of a Physician's Report dated December 2008, an Assessor's Report dated December 17, 2008, and the appellant's application of December 1~~2~~¹, 2008.

The Physician's Report was completed by a nurse practitioner. The appellant's medical conditions are noted to be chronic neurogenic pain and anxiety which the practitioner anticipates will be "likely life long". The practitioner states that the appellant has long standing chronic neurogenic pain which has disabled her for the past 11 years and which causes daily pain often accompanied by nausea and vomiting. She is treated with medication for pain and anxiety but continues to have exacerbations. The practitioner notes that the appellant is impaired with pain which decreases her ability to concentrate and do daily tasks and her anxiety also contributes to her ability to perform daily living activities. The appellant's functional skills are only limited in lifting 2 to 7 kg and she has significant deficits in emotional disturbance which is identified as anxiety relating to pain. With respect to daily living activities, the appellant is periodically restricted in basic housework, shopping and mobility inside and outside the home. The practitioner states that the appellant's activities are limited periodically by pain and nausea and vomiting and anxiety impairs her ability to interact socially at times. She further states that the appellant requires ongoing care to manage anxiety and chronic pain and overall management to re-integrate into the work force.

The Assessor's Report was also completed by the nurse practitioner. The assessor notes that the appellant resides with her cousin who assists the appellant as needed. The appellant requires periodic assistance standing, carrying and holding, basic housekeeping, laundry, going to and from stores and carrying purchases home. The assessor reports that the appellant has a moderate impact in emotion, attention/concentration, motivation and other emotional problems.

The appellant attended the hearing and advised the panel that she presently resides with her cousin and her cousin's husband who assist her with her daily living activities. She takes high doses of medication daily for pain control and anxiety. The pain from her nerve damage is very severe and disabling and also affects her left side function. This causes her to have "attacks" of pain which occur an average of 6 times per day and can last from 5 minutes to 3 hours, depending on the time of day or night. The appellant is anemic and dehydrated, she has severe panic attacks and she has also developed an issue with her lungs for which she is seeing a specialist in the near future. The appellant is on the wait list for a pain clinic in the The panel admits this as oral
evidence pursuant to section 22(4) of the Employment and Assistance Act (EAA) in support of the evidence which was before the ministry.

The ministry reviewed the legislation and medical evidence provided by the nurse practitioner which was before the ministry at reconsideration.

ATTACH EXTRA PAGES IF NECESSARY

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PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The panel must decide whether the ministry's decision to deny PWD status to the appellant was reasonably supported by the evidence.

The EAPWDA, section 2, sets out 5 criteria to be designated as a PWD:

1. The appellant must have reached the age of 18;
2. The minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities.

There is no dispute that the appellant meets criteria 1; she is over the age of 18.

The ministry's position is that the appellant has not met criteria 2, 3, 4 and 5 based on the medical information that was submitted.

The appellant's position is that she is eligible for PWD status due to her medical conditions and the resulting restrictions.

The panel accepts that the appellant suffers from significant pain and anxiety and as a result of this her lifestyle and activities are affected. The panel further accepts that the appellant lives with her cousin, who assists her with daily living activities. However, while the panel accepts this information, the extent of the appellant's limitations and required assistance has not been confirmed by her medical practitioner or a prescribed professional and as such the panel is not able to place significant weight on this evidence.

The legislation requires that a medical practitioner confirm that the appellant's impairment will continue for at least 2 years. A nurse practitioner, and not a medical practitioner, provided the only evidence of the appellant's medical conditions and their duration. As a result, the appellant has not met criteria number 3 of the legislation.

The nurse practitioner that completed the Physician's Report identified only lifting as a functional limitation and noted that the appellant has periodic restrictions in basic housework, shopping and mobility inside and outside the home. In the Assessor's Report, the nurse practitioner states that the appellant requires periodic assistance standing, carrying and holding, basic housekeeping, laundry, going to and from stores and carrying purchases home. The nurse practitioner notes significant deficits in emotional disturbance from the appellant's anxiety and moderate impact in emotion, concentration/attention, motivation and other emotional problems. The information provided by the nurse practitioner is not sufficient to establish that the appellant has a severe mental or physical impairment.

ATTACH EXTRA PAGES IF NECESSARY

Based on the Physician's Report and Assessor's Report, there is not sufficient evidence from a prescribed professional to establish that, in their opinion, the appellant's physical or mental impairment directly and significantly restricts her ability to perform daily living activities, either continuously or periodically for extended periods. The practitioner notes that the appellant's activities are limited periodically by pain and assistance is required but there is not enough information provided to establish that the appellant's activities are directly and significantly restricted. The information that is provided in the Assessor's Report alone indicates that the appellant is independent in the majority of her daily living activities.

As there is not sufficient evidence to establish that the appellant's daily living activities are directly and significantly restricted, the panel cannot find that the appellant requires significant help or supervision to perform those activities.

Based on the information provided by the physician, it was reasonable for the minister to conclude that the appellant has not met criteria 2, 3, 4 and 5.

The panel therefore determines that the ministry's decision is reasonably supported by the evidence and that decision is confirmed.