



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated January 21, 2009 which held that the appellant did not meet 3 of the 5 legislative criteria for designation as a Person With Disabilities (PWD) under section 2 of the Employment and Assistance for Persons with Disabilities Act. The ministry found that the appellant met the age and duration criteria. However, the Ministry is not satisfied the appellant has a severe mental and physical impairment and concluded that the appellant's mental and physical impairment did not, in the opinion of a prescribed professional, directly and significantly restrict her ability to perform daily living activities and that she does not require help to perform DLA

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

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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 comprised of the original application for PWD designation completed by the appellant's medical physician. The medical practitioner states that the appellant suffers from fibromyalgia, arthritis, bursitis, irritable bowel syndrome, hypertension and insomnia, and has had these conditions since 2006. The appellant's medical practitioner reports that the appellant has good to normal social functioning with immediate social networks and normal functioning with extended social networks. The appellant's medical physician reports that the appellant can walk 1-2 blocks unaided, climb 2-5 steps unaided, can lift between 5-15 lbs and can remain seated for 1-2 hours. The medical practitioner reports that the appellant is independent with most of personal care, shopping, meal preparation, cooking, finances, taking medications and with transportation. The medical practitioner further writes that the appellant requires periodic assistance with walking outdoors, lifting, carrying and holding, stating that she can not carry/lift over 5kgs for a long walk, he further indicates that the appellant requires periodic assistance with dressing and grooming (using a reach extender), laundry, basic housekeeping, and going to/from stores, however the medical practitioner does not indicate if the appellant require this periodic assistance for extended periods of time.

The appellant and appellant's advocate gave oral evidence at the hearing concerning the impact of her daily living activities. The appellant indicated that she has lived alone in her present residence for four months she has no family or friends that are able to help her with her daily living activities. The appellant's advocate indicated that the appellant does meet the requirements for a person with disabilities, she read a number of quotes from the medical practitioner's reports (patient very limited in performing activities, she is bedridden almost, she needs help, suffers doing most of her home chores, needs help sometimes, help with cleaning, shopping, she is not coping with her physical/mental chores at home). The appellant indicated that when her pain flares up it is at different times of the day or month and there is no set time or duration that the pain will last.

At the hearing the Ministry representative had nothing further to add the ministry's reconsideration decision

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry reasonably concluded that the appellant does not meet the test for persons with disabilities under section 2 (1) of the EAPWD Act. The Ministry is not satisfied the appellant has a severe mental and physical impairment which significantly restricts the appellant to perform daily living activities and the appellant does not require help to perform those activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Ministry must be satisfied that the person has a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to continue for at least 2 years and, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods and as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWD Regulation defines "daily living activities" in relation to persons who have a severe physical or a severe mental impairment.

The Ministry contends that: (1) The appellant does not have a severe mental or physical impairment. (2) The assessment from the prescribed professionals does not establish the appellant's mental or physical impairment significantly restricts the appellant's daily living activities either continuously or periodically for extended periods. (3) The appellant does not meet the help criterion as she only requires periodic use of a reach extender for specific activities and does not need an assistance animal, or the significant help or supervision of another person.

The appellant contends that she does meet the test for PWD designation because her severe physical impairment directly and significantly restricts her ability to do housework, eat properly, shop and transport purchases home, perform personal hygiene and self care, move about indoors and outdoors.

The panel finds that the evidence respecting the degree of physical impairment establishes that the appellant is independent in 3 of 6 aspects of mobility and requires only periodic assistance for the remaining 3 aspects. In terms of functional skills, the evidence establishes that the appellant does experience some limitations, which the panel finds could be reasonably seen as moderate. The evidence respecting a mental impairment establishes that there is minimal impact on cognitive and emotional functioning. Therefore the panel finds that the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment.

The panel finds that although the appellant does experience some limitations respecting her ability to perform DLA, the evidence of the prescribed professional establishes that the appellant is independent with the majority of DLA (23) and only requires periodic assistance with the remaining (5) of DLA. Therefore the panel finds that the ministry reasonably concluded that the reports by the prescribed professionals fell short of establishing that the appellant's physical impairment significantly restricts her daily living activities either continuously or periodically for extended periods because the appellant is reported to be independent with the majority of DLA and requires only periodic assistance.

ATTACH EXTRA PAGES IF NECESSARY

The panel finds that the appellant requires minimal assistance with a reach extender given that the appellant's use of the device is periodic and there is no evidence to establish that the periodic use is for extended periods. Reports by the prescribed professionals did not indicate that the appellant requires significant help or supervision of another person, or the services of an assistance animal, the only assistance that is required is with an assistance device (reach extender). Therefore, the panel finds that the ministry reasonably concluded that the help criterion was not met.

The panel finds the evidence presented reasonably supported the Ministry's reconsideration decision and confirms the Ministry's decision under section 24(2)(a) of the EAA