

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Decision under appeal is the Ministry Reconsideration Decision dated December 18<sup>th</sup>, 2008 in which the Appellant was denied Persons With Disabilities Status.

Based on the information provided the Ministry has determined that the Appellant does not have a severe mental or physical impairment. The Ministry also determined that the information does not support a conclusion that the impairment significantly and directly restricts the Appellant's daily living activities either continuously or periodically for extended periods of time. The Ministry also concludes that the Appellant does not require help to perform her daily living activities from an assistive device, an assistance animal, or with significant help or supervision from another person.

The Ministry finds that the Appellant is not eligible for Persons with Disabilities designation, as all of the legislative criteria have not been met.

## 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 Appellant was not in attendance at the Hearing. After confirming that the Appellant was notified the Hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation (EAR).

The evidence before the Panel was provided in the Appeal Record and the oral testimony of the Ministry Representative. The Appeal Record contained:

1. The Appellant's request for reconsideration;
2. Photocopies of pictures of the Appellant's legs; and
3. The Appellant's Persons With Disabilities Application.

The Ministry Representative reconfirmed the position of the Ministry. There was no conflict in the evidence between the parties.

The Appellant is over eighteen (18) years of age and a prescribed professional has confirmed that the Appellant's impairment is likely to continue for at least two (2) years. The Appellant, according to her prescribed health professional, suffers from Klippel Trenaunay Syndrome. The Appellant describes this illness as a congenital disorder characterized by Hemangiomas (abnormal benign growths on the skin consisting of masses of blood vessels), Arterial Venous Abscesses and varicose veins. The affected area is the Appellant's left leg which is enlarged and warmer than normal and has visible port wine stains. The Appellant's evidence is that new blood clots are formed on a daily basis and the pain has become unmanageable.

The Appellant spends virtually every day with a throbbing, pulsating pain in her left leg on an average of three (3) days out of every week. She states that she can barely walk around and some days she just stays in bed because the pain is too harsh to walk. She states that this is a condition she has had since birth, and that she has always used Aspirin and Tylenol to help with the swelling and decrease the pain. She states that her medication has been increased to about eight (8) pills per day before it has any effect on the pain and that her prescribed health practitioner has tried several different medications but the pain is too serious and nothing has helped. Her stomach has become constantly sensitive and painful and she was getting severe chest pains and has had to stop taking a lot of the medication and her pain has become unmanageable. She states that over the past year she has had to go on medication for depression because of the stress and strain this is putting on her life. She states that she has not been able to work since last April because she has no idea how bad her leg will be on any given day and the pressure put on her leg by walking is just too much. It causes extreme pain.

In the physicians reports under Functional Skills the health professional has stated that the Appellant can walk four (4) plus blocks unaided but only slowly. He has indicated that she can climb five (5) plus stairs slowly and there are no known limitations on her lifting ability. He has stated that she can remain seated for one (1) to two (2) hours and there is no affect on her communications ability. Her physician does state in the report that she suffers from an emotional disturbance known as depression. Under his diagnosis he has indicated that this is chronic Venous insufficiency and the onset was in the month of June 1980. The physician has known his patient for eighteen (18) years and has seen her two (2) to ten (10) times in the past twelve (12) months.

The Appellant's physician also filled out the Assessors Report. In completing the Assessors Report the prescribed health professional has stated in the area of Mobility and Physical Ability that she takes significantly longer in the areas of walking indoors, walking outdoors and climbing stairs. In the Cognitive and Emotional Functioning he has indicated that there is a moderate impact in her emotional life. The Appellant's physician under Daily Living Activities has indicated that the Appellant is independent in all of her personal care activities, basic housekeeping activities, shopping activities,

**ATTACH EXTRA PAGES IF NECESSARY**

meal activities, paying rent and bill activities, medication activities and transportation activities and is independent in all of her social functioning areas of life and has good functioning in her extended social networks and in her immediate social networks. He indicates that under Assisted Devices that she uses a compression stocking to help with her problems in her leg.

## 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 of the EAPWD Act, and Section 2 of the EAPWD Regulation.

The Ministry's position was that the Appellant does not have a severe physical or mental impairment. The information provided does not support a conclusion that the impairment significantly and directly restricts the Appellant's daily living activities either continuously or periodically for extended periods. The Ministry also took the position that the Appellant does not require help to perform her daily living activities from an assistive device, an assistance animal, or with the significant help or supervision from another person.

The Appellant's position is that she is in so much pain she is no longer able to work and some days she cannot even get out of bed. If you cannot work and cannot even get out of bed, then you are disabled.

Section 2 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) and Section 2 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) set out the criteria that have to be met to be granted the status of Persons With Disabilities under the legislation. The Ministry in its reconsideration decision concluded that the Appellant met only two (2) of the five (5) requirements. The Ministry concluded that the Appellant did meet the age requirement and that the Appellant has a condition which is likely to continue for at least two (2) years. The Panel examined the evidence to determine whether the other three (3) criteria had been met:

1. Does the Appellant have a severe physical and mental impairment? No. The Panel, based on the evidence of the prescribed professional is unable to conclude that the Appellant does suffer from a severe physical impairment. There is impairment and the impairment is the result of physical pain, but nowhere is the impairment described as severe. Based on the evidence presented the Panel was unable to conclude that there was a severe physical impairment.
2. Has a prescribed professional confirmed that the impairment significantly and directly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods? No. The evidence presented in the Application from the physician and the assessor is clear and indicates that the Appellant takes significantly longer in walking about indoors, outdoors or climbing stairs and had a somewhat limited ability in the areas of standing, lifting, carrying and holding. However the assessor's report indicates the Appellant is independent in the areas of standing, lifting, carrying and holding and can walk about indoors, outdoors and climb stairs. In the area of cognitive and emotional functioning the assessor's report indicates there is some moderate impact in the emotional area with respect to depression but that the Appellant is well motivated, In all other areas of daily living activities the assessor has indicated that the Appellant is independent in every category and that she has good functioning in her immediate social networks and in her extended social networks. As she is independent in all of her daily living activities it is impossible to conclude that the Appellant requires assistance with any of them. The Panel finds, based on the evidence, that whatever impairment the Appellant suffers from, while it may present problems with her being unable to work, it does not significantly or directly restrict her ability to perform daily living activities either continuously or periodically for extended periods.
3. Has a prescribed professional confirmed, that as a result of those restrictions, the Appellant requires significant help or supervision of another person or the use of an assistive device, to conduct her daily living activities? No. The Panel in reviewing the evidence finds that the Appellant is not significantly restricted in her daily living activities and therefore it cannot be determined that the Appellant requires significant help with any of these activities or the use of an assistive device or the services of an assistance animal.

The Panel finds that the decision of the Ministry is reasonable based on the evidence as presented at this time and also finds that there has been a reasonable application of the applicable enactment in the circumstance of the Appellant and therefore confirms the decision of the Ministry under Section 24 (2) (a) of the EAA.