

PART C – DECISION UNDER APPEAL

On July 22, 2009 the ministry made a reconsideration decision which denied the appellant designation as a Person with Disabilities (PWD). The ministry said that while the appellant has met the age and duration criteria and that the ministry is satisfied the appellant has a severe physical impairment, the appellant has not

- provided evidence from a prescribed professional that her impairment directly and significantly restricts her ability to perform daily living activities (DLAs) either continuously or periodically for extended periods, and
- that as a result of direct and significant restrictions, requires help to perform DLAs.

PART D – RELEVANT LEGISLATION

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The Employment and Assistance for Persons with Disabilities (EAPWD) Act, Section 2.
The Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Section 2.

PART E – SUMMARY OF FACTS

The evidence before the ministry consists of the appellant's Request for Reconsideration including:

1. Ministry file notes analyzing the original ministry decision to deny PWD status.
2. A letter from the appellant's orthopedic surgeon dated February 18, 2009.
3. A letter from another orthopedic surgeon dated April 2, 2009.
4. The appellant's application for PWD designation.

The appellant's physician diagnoses her with degenerative disc disease and osteoarthritis in the ankle and back (both since 1993), type II diabetes, and depression. The appellant states she also suffers from fibromyalgia in her hip area. The physician reports that the appellant's pain management is improving with medication but the appellant states that she has been taking extra strength tylenol and advil for so long, they no longer work and that morphine "only knocks the edge off the pain". She states the pain is sometimes so intense, it causes her to pass out. The appellant is scheduled for ankle repair surgery in the near future.

In the physician's report section of the appellant's PWD application, the physician notes no activity restrictions for personal self-care, meal preparation, management of medication, mobility inside the home, and management of finances and social functioning. The physician notes there are restrictions affecting basic housework, daily shopping, mobility outside the home and use of transportation. For these daily living activities (DLAs), the physician has not indicated whether the restrictions are continuous or periodic. In the narrative, the physician states the appellant needs a cane and needs assistance from son for shopping and cleaning.

In the assessor report section of the PWD application, the assessor (in this case, the appellant's physician) does not indicate any mental impairment that impacts DLAs and checks off as "good" all categories of ability to communicate. The assessor checks off as "uses assistive devices" for all categories of mobility and physical activity. The assessor does not explain and specify the assistive devices, nor does he add any comments. In the section dealing with mental impairment, the assessor checks off impulse control, use of language and psychotic symptoms as having no or minimal impact. He checks off bodily functions, emotion, judgment, concentration, abstract thinking, memory, motor activity and other as having moderate impact on functioning. For "other" the assessor notes the appellant worries about rent and food and that she cares for a mentally challenged son. In the section dealing with DLAs, there are 28 subcategories. Of these, 24 are indicated to be performed independently. The assessor indicates that the other 4, laundry, basic housekeeping, going to and from stores and carrying purchases home require periodic assistance. The assessor indicates "grocery cart" to explain "carrying purchases home. No other explanations nor descriptions are indicated. The assessor says she needs help with cleaning and groceries, which she receives from her son, that her situation would improve with a bus pass and that she will require crutches for up to 5 months following ankle surgery.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the ministry's decision to deny the appellant PWD status.

The EAPWD Act, Section 2 states that the minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if that 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,
- (b) In the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions the person requires help to perform those activities.

Section 2(3) of the Act states that for the purposes of Subsection 2,

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

The EAPWD Regulation, Section 2 states that

- (1) For the purposes of the Act and this regulation, "daily living activities"
 - (a) In relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepares own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary conditions;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
 - (b) In relation to a person who has a severe mental impairment, includes the following:
 - i. make decisions about personal activities, care or finances;
 - ii. relate to, communicate or interact with others effectively.
 - iii. For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of
 - medical practitioner,
 - registered psychologist,
 - registered nurse or registered psychiatric nurse,

- occupational therapist,
- physical therapist,
- social worker,
- chiropractor, or
- nurse practitioner.

The ministry argues that while the appellant meets the age and duration of impairment criteria for PWD designation, and is satisfied that she has a severe physical impairment, the ministry says that there is no evidence from a prescribed professional that her impairment directly and significantly impacts her DLAs and that she requires significant help to perform them.

The appellant argues that she lives in constant severe pain, which is barely contained by prescription narcotics. She periodically cannot get out of bed for days at a time and has passed out in public from extreme pain.

The appellant meets the criteria of age and duration of impairment and the ministry is satisfied that she has a severe physical impairment. However, the appellant's prescribed professional indicates the appellant is independent in performing 24 of 28 basic DLA subcategories. For the remaining 4, which are stated to require periodic assistance from another person, the only explanation/description is "grocery cart" for "carrying purchases home". The physician states the appellant needs a cane, however neither the physician nor the assessor explains when or for how long a cane is needed to help the appellant perform DLAs. The panel finds that the prescribed professional did not provide evidence that the appellant requires the significant help or supervision of another person or the use of an assistance animal in performing those DLAs. The panel finds the ministry was reasonable in determining that the appellant does not have a severe physical impairment that directly and significantly restricts DLAs, or that she requires help as a result of those restrictions.

The panel finds that the appellant's circumstances do not meet the relevant legislative tests because the prescribed professional has not confirmed that her impairments directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods. The prescribed professional's report falls short of establishing the criteria that must be met as per Section 2(2) of the EAPWD Act. Accordingly, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.