



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated January 06,2009 denied the Appellant status as a Person with Disabilities (PWD) on the following basis:

- 1) she does not have a severe mental or physical impairment;
- 2) her impairment does not significantly restrict her ability to perform daily living activities;
- 3) it cannot be determined that she requires the significant help or supervision of another person, assistive device or assistance animal to perform daily living activities restricted by her impairment.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act , sec 2
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, sec2

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 is a female person diagnosed with Crohn's Disease, Lumbar Disc Disease, Asthma, Stress/Anxiety and diffuse myalgias.

The Panel read the Appeal Record. The Appeal Record included the following documents:

1. Notice of Appeal dated January 19 2009
2. Reconsideration Decision dated January 6 2009
3. Extracts of legislation
4. Request for Reconsideration dated December 16 2008
5. Supplemental Medical Opinion: Checklist of Restrictions to DLA (SMO:DLA)
6. Supplemental Medical Opinion: Help Required and Severity (SMO: Help & Severity)
7. Application for PWD designation dated October 28 2008
8. Physician's Report dated October 29 2008
9. Assessor's Report dated October 29 2008
10. PWD Case Profile Sheet extracts November 27, 2008

The Ministry's position is that the medical evidence does not show a severe physical or mental impairment and that there is not enough evidence of restrictions to a majority of daily living activities in order to qualify for the PWD designation.

The Ministry referred to the Physicians Report and the Assessor's Report.

The Physician's Report and the Assessor's Report were completed by the same person who is a prescribed professional. In Part C of the Assessor's Report the Assessor marked the Appellant as Independent in 26 of 28 Daily Living Activities, periodic assistance required in 1, and that it takes significantly longer in 2, namely laundry and basic housekeeping. In the "Social Functioning" section of Part C the Appellant was marked as good functioning with her immediate social network and extended social network.

The Ministry also reviewed the SMO DLA and the SMO Help and Severity and their position was that the information was still insufficient to conclude that the Appellant was restricted in performing a majority of Daily Living Activities.

The Appellant states that she suffers from stress anxiety. In the Physician's Report Part D Functional Skills the doctor writes yes in answer to the question whether there are any significant deficits with cognitive and emotional function. He marks off two of 12 items namely memory, and emotional disturbance (eg. depression anxiety) and then writes in the comment "mostly due to husband's quadraplegia".

In the SMO:Checklist the Doctor says that the Appellant is not restricted either continuously or intermittently for extended periods but she takes 1-x2 longer to perform the daily living activities.

In the SMO:Help & Severity, the Doctor states that the Appellant does require help with daily living

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activities of lifting, vacuuming, shoveling . If help is not available she will postpone that activity. He also answers yes to the question whether the Appellant has a severe physical and/or mental impairment and comments that she has a significant medical impairment.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Sec 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act. These criteria are:

1. must be at least 18 years of age,
2. a medical practitioner must have confirmed that the impairment is likely to continue for at least two years,
3. the Minister must be satisfied that the Appellant has a severe mental or physical impairment,
4. a prescribed professional must have confirmed that the severe impairment directly and significantly restricts the ability to perform daily living activities, either continuously or periodically for extended periods, and
5. a prescribed professional must have confirmed that, as a result of those restrictions, the person requires help performing daily living activities

The Ministry's position was that the Appellant met two of the five criteria for a PWD designation, namely age and duration, but did not meet the three criteria of, severity, restrictions on ability to perform defined daily living activities, and significant help required. The Appellant was not restricted in a majority of the daily living activities listed in the Physician's Report and the Assessor's Report and the Supplemental Medical Opinion did not provide enough detail to determine the Appellant was restricted in a majority of her daily living activities.

The Appellant's position is that she suffers from a severe physical impairment because of her diagnosis with Chron's Disease ,asthma , weak back muscles and she cannot lift anything over 10-15 lbs. She has aches and pains. Vacuuming sweeping and shoveling are hard to do. When she goes shopping she needs help lifting groceries in and out of the car. She has to make 8 trips back and forth instead of 4 because of lifting. She says she has limited choices in what she eats because she has had six major operations on her intestines and colon for removal and needs to chew food well in order to digest. She has incontinent accidents frequently as reported by the doctor and she says she has chronic diarrhea. The Appellant argues that the Doctors has written in the SMO checklist that her physical impairment is severe and that she needs help to do her daily living activities, especially lifting, laundry, gardening and housework. She says that the Supplemental opinions of the doctor support her position that she is restricted in performing her daily living activities and that she needs help 2 to 3 times a week.

In this case the Ministry recognizes that the first two criteria have been satisfied .However in order to qualify for PWD designation the Appellant must satisfy all of the five criteria set out in Section 2 of the EAPWD Act. If the Appellant does not meet even one of the criteria she is not eligible. The evidence of the prescribed professional as mentioned in the SMO Checklist and the Severity and Help Required answered yes to the question whether the Appellant has a severe physical and/or mental impairment, and commented that the Appellant has a severe medical impairment. This would indicate the Appellant meets the criteria of severity of a physical impairment. The Appellant stated that she is not claiming a mental impairment.

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In the Assessor's Report the Appellant is marked Independent in 26 of 28 Daily Living Activities listed in Part C of the Assessor's Report which is the majority. She is marked as needing periodic assistance for Laundry and that it takes her longer. She is marked as taking significantly longer than typical for Basic Housekeeping. In the SMO Checklist the doctor circled "no" in answer to the question whether in his professional opinion the Appellant's ability to perform the Activities indicated on the previous page were restricted either continuously or intermittently for extended periods. In the previous page he noted a restriction in 3 of 8 daily living activities listed. This is not a majority of daily living activities. This would indicate that she has not met the fourth criteria of significant restriction in performing daily living activities.

There is evidence from the Doctor and the Appellant that she receives help from friends and family however it is difficult to determine from the evidence how much help is required.

It could not be concluded from the evidence that the Doctor opined that the Appellant's impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods because the doctor answered no to that very question raised in the SMO Checklist. The Appellant must meet all five criteria and the appellant did not meet them all. Therefore the Panel determines that the Reconsideration Decision was a reasonable application of the legislation in the Appellant's circumstances and the Panel must confirm the decision.