

[]

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In the reconsideration decision of December 19, 2008, the appellant was denied status as a person with disabilities (PWD) because 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 April 30, 2008, an Assessor's Report completed by another physician and dated July 23, 2008, an undated Supplemental Medical Opinion (SMO) and the appellant's application of April 24, 2008.

The Physician's Report states that the appellant suffers from epilepsy with seizures triggered by various stimuli and myoclonic jerks many times per day which causes social inhibition and momentary loss of consciousness makes certain employment and activities unsafe. The physician notes that grand mal seizures are less common, with the last being in 2005, but they are seriously disabling. The physician identifies no functional limitations. He identifies use of transportation as periodically restricted and specifies that the seizures and myoclonic jerks are intermittent. The clinical course and frequency of attacks are unpredictable and her condition has proven difficult to control and there are no viable treatment alternatives.

In the Assessor's Report, the physician notes that the appellant resides with family and requires continuous assistance walking outdoors. He notes the appellant could not work at heights or near dangerous equipment. Bathing is continuously restricted but showering is okay and the appellant requires continuous assistance going to and from stores as the physician notes she is more comfortable with assistance from her mother. The appellant is stated to require continuous assistance with cooking as she must be cautious with heating pots. Her social functioning is unrestricted.

The appellant's physician provided a SMO which states that it helps for her to have supervision with heating pots of water and she is more comfortable with supervision in shopping for personal needs. These daily living activities are restricted as her myoclonic jerks and seizures are occasionally triggered with little warning and it takes her 1 to 2 times longer to perform her daily living activities (DLA). The physician states that the appellant has no restrictions on mobility or physical activity, assistance is supervisory in nature. The physician agrees that the appellant requires help with her DLA and notes that supervision is required in the bathtub and some cooking activities and she is more comfortable shopping with her mother. The physician answers "No" to the question of whether the appellant has a severe physical or mental impairment.

The appellant did not attend the hearing. She provided written authorization for her advocate to speak at the hearing on her behalf. The appellant's advocate advised the panel that the appellant is an adult with a pre-teen aged daughter and they reside with the appellant's parents. The appellant takes medication 2 times daily to control her epilepsy. She suffers from more than 10 small seizures in a week and can sometimes suffer these seizures 3 to 4 times per day. These seizures cause her to drop things and have a momentary loss of consciousness. After her seizures the appellant has no energy or motivation and must lie down. The appellant is never left alone because of her seizures.

The appellant's advocate submits that the appellant's condition is severe as it is frequent, unpredictable and chronic. The advocate further submits that the appellant requires constant supervision and the physician has confirmed that she is restricted with preparing her own meals, shopping, using public or personal transportation, moving about outdoors and performing personal hygiene and self care. The panel admitted this 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 physicians which was before the ministry at reconsideration.

ATTACH EXTRA PAGES IF NECESSARY

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 and 3; she is over the age of 18 and her medical practitioner has confirmed that her condition will continue for at least 2 years.

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

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

The panel accepts that the appellant suffers from frequent myoclonic seizures and, less frequently, from grand mal seizures and as a result of this her lifestyle and activities are affected. The panel further accepts that the appellant lives with her parents who assist her with her daily living activities and provide supervision. However, while the panel accepts this information, the extent of the appellant's limitations and required supervision has not been confirmed by her medical practitioners and as such the panel is not able to place significant weight on this evidence.

The evidence of the physician that completed the SMO is that he does not believe the appellant suffers from a severe physical impairment. The legislation requires that the minister must be satisfied that the appellant has a severe physical impairment. This requires a global assessment of the appellant's condition rather than solely the statement of the physician. However, in making a global assessment of the evidence as provided by the physicians and the appellant, the panel finds that it was reasonable for the minister to conclude that the appellant does not suffer from a severe physical impairment.

The physician that completed the Physician's Report identified no functional limitations. While the evidence of this physician and the physician that completed the Assessor's Report indicate that the appellant suffers from some restriction in her DLA of bathing, moving outdoors, cooking and shopping, a physician specifically states that the appellant has no restrictions on mobility or physical activity and notes that the assistance is supervisory in nature.

ATTACH EXTRA PAGES IF NECESSARY

[]

A physician further notes, in the case of shopping, that the appellant is "more comfortable" shopping with her mother. Further, while the appellant's ability to bathe is restricted she is able to shower unsupervised.

Based on the Physician's Report, Assessor's Report and SMO, there is not sufficient evidence from a prescribed professional to establish that, in their opinion, the appellant's physical impairment directly and significantly restricts her ability to perform daily living activities, either continuously or periodically for extended periods.

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, 4 and 5.

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