

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In a reconsideration decision dated August 19, 2009, the Ministry denied the Appellant a Person with Disabilities designation because they concluded she did not meet 3 of the 5 statutory requirements for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement and met the requirement that her physical or mental impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because the information submitted by a prescribed professional did not establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict her ability to perform daily living activities and she does not require 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) Sections 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 Ministry was a completed Person with Disabilities (PWD) designation application which included a physician report and an assessor report completed by the same prescribed professional. In the physician report, the prescribed professional states the Appellant has scoliosis and Grave's disease. Under the section addressing the severity of the medical conditions, the prescribed professional noted the Appellant has worsening back pain, is unable to sit or stand for more than 30 minutes and is unable to use her arms at shoulder level or above. He also confirms the Appellant has not been prescribed with any medications or treatments that interfere with her ability to perform daily activities and that she does not require any aides for her impairment.

Under functional skills, the prescribed professional writes the Appellant can walk 1 - 2 blocks unaided, climb 2 – 5 stairs unaided, can lift under 2 kilograms and remain seated for less than 1 hour.

The prescribed professional states the Appellant's daily living activities are unrestricted in all areas except basic housework. In the table of daily living activities, basic housework is checked as restricted continuously, the other 8 daily living activities are checked as not restricted. The prescribed professional notes the Appellant needs assistance from her husband or daughter with housework.

At the hearing, the Ministry reviewed the legislative criteria for PWD status and stated the information provided in the PWD application was not sufficient to meet the criteria.

In the applicant section, the Appellant submits she has trouble taking a shower, shopping, doing housework and preparing meals. She also states she cannot walk more that one block and has trouble lifting more that 10 to 20 pounds.

At the hearing, the Appellant confirmed she needs assistance with housework and states her friend helps her every couple days with housework and laundry.

In the Appellant's request for reconsideration, the prescribed professional has noted since May 2009, the Appellant has said her back pain has become so bad that she can no longer climb stairs, is unable to vacuum or wash floors, and is unable to stand long enough to cook a meal. The prescribed professional states these are self reported symptoms and there are no objective signs of significantly worse back pain or significant deterioration in function.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in the case is the reasonableness of the Ministry's decision to deny the Appellant a Person with Disabilities designation based on the Appellant not meeting 3 of the 5 necessary statutory requirements for PWD designation. The Ministry found the information submitted by a prescribed professional did not establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict her ability to perform daily living activities and she does not require significant help or supervision of another person to perform daily living activities.

The criteria for PWD designation is set out in EAPWDA, Section 2 as follows.

(2) 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 the minister is satisfied that the 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, and

(b) in the opinion of a prescribed professional (B.C. Reg. 196/2007)

(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.

(3) 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 definition of daily living activities is set out in EAPWDR, Section 2 as follows.

ATTACH EXTRA PAGES IF NECESSARY

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2 (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) prepare 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 condition;*
- (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 activities:

- (i) make decisions about personal activities, care or finances;*
- (ii) relate to, communicate or interact with others effectively.*

The Ministry argues a severe physical or mental impairment has not been established, the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities, and that the Appellant requires help to perform those activities.

The Appellant argues her daily living activities are restricted and her family and friends help her to perform these activities.

The Panel finds the Appellant has a physical impairment however the severity has not been established. The prescribed professional notes the Appellant can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, lift under 5 pounds and remain seated less than one hour. The prescribed professional also states the worsening back ache is a self reported (by the Appellant) symptom and there are no objective signs of significant worse back pain or significant deterioration in function.

The Panel finds the PWD application does not establish that the Appellant's impairment significantly restricts her daily living activities. The prescribed professional in the assessor report states she is independent in 30 of the 33 daily living activities other than laundry, basic housekeeping and carrying weight.

The Panel finds the PWD application does not establish that as a result of her impairment the Appellant requires significant help or supervision to perform her daily living activities. She is assessed as independent in 30 of 33 daily living activities, uses her family to provide help in 3 of the daily living activities, and does not use assistive devices or assistive animals.

The Panel finds the Appellant does not meet all the statutory requirements for designation as a PWD.

The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.