



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated August 27, 2009 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLA, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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 ministry at the time of the reconsideration decision included: (a) Request for Reconsideration; (b) Imaging Consultation Report, dated June 19, 2009; (c) Persons with Disabilities Designation Application, Section 1, dated April 20, 2009, Section 2, dated April 20, 2009, and Section 3, dated May 31, 2009; (d) Hospitalization Report re: January 9-15, 2008.

At the hearing, the ministry provided that the medical practitioner in the Physician's Report (PR) – filled out by a medical practitioner who has seen the appellant many times since December 31, 2008, recorded that the appellant has a diagnosis of fibromyalgia and osteoarthritis in both knees. The PR states that the functioning includes that the appellant can walk 2-4 blocks, climb 5+ stairs, lift 2-7 kg, and sit for less than 1 hour. There are no cognitive or emotional functioning impacts. The PR states that no daily living activities (DLA) are restricted. The Assessor's Report (AR) – filled in by a prescribed professional who met with the appellant once - states that the appellant's physical impairments impact her DLA in that she has periodic assistance in lifting and carrying, takes significantly longer ("2 times longer") in the aspects of walking indoors and outdoors, climbing stairs, standing and lifting and carrying. The appellant uses an assistive device (cane or walking stick) for walking and climbing stairs. Cognitive and Emotional Functioning impacts are listed as moderate (bodily functions, emotion – anxiety, depression, impulse control); minimal impact in emotional or mental problems – verbally abusive and aggressive when in conflict. All other aspects have no impacts listed. The AR reports the appellant independent in 27/36 DLA aspects. Those DLA aspects requiring periodic assistance include transfers in/out of bed, basic housekeeping, carrying and that the appellant uses an assistive device or takes significantly longer in the following aspects: bathing, transfers in/out of bed (and vehicle), basic housekeeping, carrying and taking medications as directed. The AR states that the appellant has good social functioning and that she does receive assistance from friends, family and from her fiancé when he is in town. The AR states that "the appellant admits to periods of depression, anxiety and poor impulse control".

At the hearing the appellant advised that her health issues are getting worse, that she takes a lot longer to complete basic housekeeping (vacuuming, carrying, lifting, getting in/out of bed) and that she gets help when she can from her friends, family and from her fiancé when he is in town. The appellant is living alone. The appellant now has a medical practitioner with whom she feels comfortable. The appellant stated that although she has tried several medications, she is not taking any medications to treat her admitted periods of depression and has in the past taken amitriptyline and T3's to treat her fibromyalgia and pain associated with osteoarthritis.

There is no dispute to the facts in this case.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reconsideration decision dated August 27, 2009, on whether the ministry reasonably concluded that the appellant is ineligible for PWD as she does not have a severe physical or mental impairment and that her DLA are, in the opinion of a prescribed professional, not directly and significantly restricted either continuously or periodically for extended periods and as a result of those restrictions, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The issue under appeal is whether the ministry reasonably concluded that the appellant is ineligible for PWD as she does not have a severe physical or mental impairment and that her DLA daily living activities (DLA) are, in the opinion of a prescribed professional, not directly and significantly restricted either continuously or periodically for extended periods and as a result of those restrictions, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions, in the opinion of the prescribed professional, the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation facilities, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

The ministry's position is that the evidence does not establish that the appellant has a severe physical impairment that in the opinion of a prescribed professional significantly restricts DLA or necessitates help with DLA.

The appellant's position is that the evidence establishes that the appellant does have a severe impairment that does significantly and continuously restrict her ability to perform DLA and that she could use the help of another person to complete DLA.

Regarding the existence of a severe physical impairment, the panel finds that the evidence establishes that the appellant has some depression (untreated), fibromyalgia and osteoarthritis in both knees. However, the panel finds that the medical practitioner's documentary evidence confirming that appellant has good physical functioning does not establish that the physical condition is severe. Therefore, the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

Regarding the existence of a severe mental impairment, the evidence provided by the prescribed professional does not identify a mental impairment in the PR. The AR does indicate periods of depression, but no significant mental deficits or impacts on DLA are indicated in either the PR or AR. As such, the panel finds that the ministry reasonably determined that there is not sufficient documentary evidence to establish the existence of a severe mental impairment and that as neither a severe physical or mental impairment has been established, the legislative requirement of section 2(2) of the EAPWDA has not been met.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the prescribed professional's Assessor Report, which establishes that the appellant is independent in the majority of DLA (29/36 aspects). The panel finds that the evidence establishes that the appellant's impairments have some impact on her ability to perform some DLA and has restrictions periodically in lifting and carrying, takes significantly longer ("2 times longer") to complete the aspects of walking indoors and outdoors, climbing stairs, standing and lifting and carrying. The prescribed professional's evidence regarding the independence of the appellant to complete DLA, does not establish that the appellant's impairment has directly and significantly restricted the appellant's ability to perform DLA. Therefore the panel finds that the ministry reasonably concluded that the evidence does not establish a direct and significant restriction, in the opinion of a prescribed professional, of the appellant's ability to perform DLA as required by section 2(2)(b)(i) of the EAPWDA.

In determining whether the ministry reasonably concluded that the appellant does not require help with DLA, the panel finds that the evidence of the medical practitioner establishes that the appellant is assisted by friends, family or her fiancé when he is in town to complete some DLA. The appellant receives help in transfers, lifting and carrying, and basic housekeeping. However, the panel finds that as the appellant does not have a severe or mental impairment that establishes a direct and significant restriction and that as a result of those restrictions, the person requires help to perform those activities, the panel finds that the ministry reasonably determined that the requirement for help to perform the DLA under section 2(2)(b)(ii) of the EAPWDA has not been met.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.