

## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated 2009 August 26 which denied the appellant's request to be designated as a Person With Disabilities (PWD). The decision stated that the appellant must meet five criteria as set out in the legislation. The ministry was not satisfied that the appellant met all the criteria. Specifically, the ministry found that:

- the appellant is at least 18 years old
- a medical practitioner has confirmed that the appellant's impairment is likely to continue for at least two years.

The ministry's decision also stated that:

- the minister is not satisfied that the appellant had a severe physical or mental impairment
- the appellant's prescribed professional does not confirm that the appellant's impairment directly or significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.
- the appellant's prescribed professional does not confirm that, as a result of restrictions, she requires help to perform her daily living activities.

## **PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Act, Section 2  
Employment and Assistance For Persons With Disabilities Regulation, 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 Reconsideration was:

- the appellant's Request for Reconsideration application dated Aug 7, 2009
- a document titled 'PWD and PPME Support Assessment dated 07 08 2009
- the appellant's PWD application dated March 30, 2009
- a letter from the ministry to the appellant dated July 10, 2009

In its Reconsideration Decision, the ministry stated the appellant met the age criterion but it is not satisfied that the appellant has a severe physical or mental impairment. The decision also states that a medical practitioner has confirmed that the condition is likely to last at least 2 years. Additionally the decision stated that the appellant's prescribed professional does not confirm that the appellant's impairment directly or significantly restricts her ability to perform daily living activities; and, the appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities or significantly restricts her ability to perform daily living activities.

At the hearing the appellant described her condition to the panel:

- she has chronic fatigue syndrome and fibromyalgia
- in winter she is bed ridden and sleepy a lot
- she is tired and exhausted
- she doesn't have the stamina for shopping
- she loses focus and concentration
- on the worst days she can walk only 1 block very slowly
- she has trouble with even just 1 stair in the winter
- she can't always shower due to her lack of energy
- she can't do dishes or even sweep the floor in the winter
- she is not on medication as she has been told there is none that can help
- she can't manage her finances year round
- she requires help with cooking and cleaning

She advised that she didn't get good advice from her advocate on how to fill out the PWD form. She stated that she needs help.

At the hearing the ministry advised the panel the appellant's comments about the seasonality of her impairment would also indicate her impairment was not severe.

The panel concluded that the evidence is as follows:

- the appellant's physician has confirmed that the appellant suffers from multiple medical conditions including chronic fatigue syndrome, fibromyalgia, depression, memory loss and muscular pains
- the assessor's report, completed by the appellant's physician notes that the appellant takes significantly longer to perform the following:

- walking outdoors
- climbing stairs
- lifting
- carrying and holding
- the assessor notes that the appellant's cognitive and emotional functioning has a major impact on:
  - emotion
  - attention/concentration
  - executive planning
  - memory
  - motivation
  - motor activity
- the assessor notes that the appellant's cognitive and emotional functioning has a moderate impact on:
  - bodily functions
  - impulse control
- the assessor's report also notes that the appellant requires continuous assistance from another person for:
  - food preparation
  - cooking
- the assessor's report also notes that the appellant takes significantly longer to perform the following daily living activities:
  - laundry
  - basic housekeeping
  - reading prices and labels
  - making appropriate choices
  - paying for purchases
  - carrying purchases home
  - meal planning
  - food preparation
  - cooking
  - banking
  - budgeting
  - pay rent and bills
  - using public transit
  - using transit schedules
- the assessor's report also states that periodic supervision is required in the following areas of social functioning:
  - able to develop and maintain relationships
  - interacting appropriately
  - able to deal with unexpected demands
  - able to secure assistance from others
- the assessor's report also states that the appellant has very disruptive functioning and requires continuing mental health support.

## PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the Ministry's decision to deny the appellant's request for PWD designation.

The relevant legislation is the EAPWDA, Section 2. EAPWDA Section 2 (2) and EAPWDR Section 2. The Employment and Assistance PWD Act Section 2 (2) states that the minister may designate a person who has reached 18 years of age PWD if 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
  - (i) directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

Section 2 (3) states that

- (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

The ministry confirms that the appellant meets the age criterion and that the impairment is likely to last at least 2 years. The ministry's position is that the other criteria in the legislation have not been met:

- it is not satisfied that the appellant has a severe physical or mental impairment
- the appellant's prescribed professional does not confirm that the appellant's impairment directly or significantly restricts her ability to perform daily living activities
- the appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities or significantly restricts her ability to perform daily living activities.

The appellant's position is that she has multiple medical problems and she needs help.

In addition to the age and duration criteria, the panel concluded that the evidence confirms that the appellant meets the following other criteria set out in the legislation, namely:

- the appellant has multiple physical and mental medical impairments. Her physician states that she has a 20 year history of chronic fatigue syndrome and fibromyalgia. In describing her mental impairments the physician states that she has very disrupted functioning and needs continuing mental support. Accordingly, the panel finds that she has both severe physical and mental impairments.
- the panel noted the evidence of the assessor's report which indicates that the appellant's impairment directly restricts her ability to perform daily living activities in that she takes significantly longer to perform fourteen daily living activities in the areas of housekeeping, shopping, meals, rent & bills and transportation. The panel therefore concluded that her impairment directly and significantly restricts her ability to perform her daily living activities

either continuously or periodically for extended periods.

The legislation states that a person with a severe physical impairment must require help to perform those activities that are restricted. The panel found no evidence that the appellant requires such assistance.

Section 2 (3) also states that a person with a severe mental impairment must require an assistive device or the significant help or supervision of another person in order to perform a daily living activity. The panel found no evidence that the applicant requires an assistive device. While the evidence indicates that the appellant needs periodic supervision for social functioning, there is no evidence that she requires the significant help or supervision of another person in performing daily living activities

Accordingly, the panel finds that the ministry's decision is reasonably supported by the evidence and the panel confirms the ministry's decision.