

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated September 3, 2009, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). Of the five legislative criteria that an applicant for designation as a PWD must meet, the Ministry found that the Appellant met two; the age requirement and the requirement that a medical practitioner must confirm that the applicant's impairment is likely to continue for at least two years. The Ministry found that the Appellant does not have a severe mental or physical impairment that directly and significantly restricts her ability to perform daily living activities, either continuously or periodically for extended periods, and that a prescribed professional did not confirm that, as a result of those restrictions, the Appellant requires help to perform those 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).

Information before the Ministry at Reconsideration included:

- the Appellant's PWD Designation Application, stamped as received by the Ministry June 8, 2009
- a copy of the Ministry Adjudicator's worksheet, dated July 21, 2009
- a copy of the Appellant's Request for Reconsideration, with attachments, stamped as received by the Ministry August 24, 2009

At the hearing the Appellant stated that she has heart disease and angina that has worsened since her application for PWD designation was completed. She also stated that she was admitted to hospital in August, 2009 for treatment of a brain aneurism, however she did not provide any evidence at the hearing to support this. The Appellant noted that the diagnoses listed by her physician include ischemic heart disease, asthma, likely caused by chronic obstructive pulmonary disease (COPD), and chronic back pain. Her physician noted that she was diagnosed with psychosis in 1992, but this has not recurred. She uses a nitro glycerine puffer for her angina.

With respect to her ability to perform daily living activities, the Appellant stated that friends help her carry things. She stated that she finds housework difficult because she has arthritis and early stages of osteoporosis, although these are not listed among the diagnoses in her PWD application. The Appellant noted that her physician listed five significant deficits to her cognitive and emotional function as well as periodic restrictions with personal self care, meal preparation, management of medications, basic housework, daily shopping and mobility outside the home. The Assessor noted that she requires periodic assistance from another person in lifting, carrying and holding, laundry, basic housekeeping, going to and from stores, food preparation and cooking. The Appellant drew attention to the Assessor's statement "any activities requiring strength and endurance will require assistance". The Assessor noted that the Appellant tires easily, needs to rest frequently and is unable to carry heavy items due to a lack of strength and endurance in the notes referring to her inability to satisfactorily carry out daily living activities. The Appellant confirmed the Assessor's statement that she previously relied on her brother for assistance, but he died recently.

The Ministry responded that they placed more weight on the physician's assessment of the Appellant's condition than on the Assessor's due to the length of time the physician has known her, 18 years, compared with a single visit to the Assessor. While noting the physical and mental conditions described in the Appellant's PWD application, the Ministry found that the information contained in the Appellant's PWD application did not establish that her impairment is severe.

The Ministry referred to the Reconsideration Decision, which states that the information provided in the PWD application does not confirm that the Appellant's impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods, and that as a result, she requires help to perform them. The Ministry notes in the Reconsideration Decision that the duration and amount of assistance required by the Appellant is not stated.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for PWD designation.

Sections 2(2) and 2(3) of the EAPWDA list the criteria that an applicant who has reached 18 years of age must meet for the ministry to designate him/her as a PWD. The ministry must be satisfied that a person has a severe mental or physical impairment that:

- a) pursuant to s. 2(2)(a) in the opinion of a medical practitioner is likely to continue for at least 2 years;
- b) pursuant to s. 2(2)(b) in the opinion of a prescribed professional: (i) directly and significantly restricts the person's ability to perform daily living activities (DLAs), either continuously or periodically for extended periods; and, (ii) as a result of those restrictions, the person requires help to perform those activities; and,
- c) pursuant to s. 2(3)(b) the help required may be in the form of (i) an assistive device; (ii) the significant help or supervision of another person; or, (iii) the services of an assistance animal.

S. 2(1)(a) of the EAPWDR lists the DLAs pertaining to those with severe physical and mental impairment. These include meal preparation, managing personal finances, shopping for personal needs, using public or personal transportation facilities, performing basic housework, mobility indoors and outdoors, performing personal hygiene and self-care, and managing personal medication. S. 2(1)(b) of the EAPWDR lists the additional DLAs pertaining to those with a severe mental impairment and includes making decisions about personal activities, care or finances; and ability to relate to, communicate, or interact with others effectively. S. 2(2) of the EAPWDR lists the prescribed professionals referred to in s. 2(2)(b) of the EAPWDA.

The Appellant's position is that her impairment is severe and that it prevents her from carrying out daily living activities satisfactorily due to shortness of breath and a lack of strength and stamina. The recent death of her brother has meant the loss of her primary source of assistance.

The Ministry's position is that the Appellant's application for PWD designation does not meet the legislative requirements. The Appellant's physician has noted some deficits in her ability to perform daily living activities, but the amount and duration of the assistance required is not specified. The Ministry found that the Appellant meets the requirements for age and duration of his impairment, but does not meet the remaining criteria for designation as a PWD.

The Panel first looked at the severity of the Appellant's mental impairment. The Appellant's physician noted that the Appellant has sleep disturbance and problems with motivation, impulse control, attention and concentration. She also noted that the Appellant suffered psychosis in 1992, but this has not recurred. Her assessor noted similar impairments to those listed by the physician, but indicated that the Appellant has good functioning with respect to social networks. The Panel finds that the Ministry's determination that the Appellant does not have a severe mental impairment was reasonable.

With respect to a severe physical impairment, the physician indicated that the Appellant has

arteriosclerosis, asthma (likely COPD), chronic back pain and a history of substance abuse. Under the functional skills portion of the Physician section of the PWD application, the physician noted that the Appellant could walk one to two blocks unaided on a flat surface, could climb 2 to 5 steps unaided and could lift no more than 5 pounds. Of the ten daily living activities listed in the Physician section of the PWD application, the physician indicated that the Appellant is restricted in eight. The assessor noted that when walking outdoors and climbing stairs, the Appellant experienced shortness of breath, tightening of the chest and angina. Food preparation and cooking also lead to shortness of breath, and constant back pain was a further limiting factor. Taken together with the assessor's comments concerning the Appellant's lack of endurance and strength, the Panel finds that the Ministry's determination that the Appellant does not have a severe physical impairment was not reasonable.

With respect to the Appellant's ability to perform daily living activities, the Panel notes that the Appellant's physician indicated that eight out of ten daily living activities are restricted periodically. The assessor noted that any activities requiring strength and endurance require assistance, and that she must rest frequently, is easily tired, is unable to stand for long periods and has a lack of strength and energy, therefore she takes significantly longer to perform activities involving mobility and physical ability. The Panel finds that the Ministry's determination that her impairment does not directly and significantly restrict her ability to perform daily living activities was not reasonable.

With respect to the Appellant's requirement for assistance to perform daily living activities, the Panel notes that the lack of available assistance is not an indication that it is not required. The Ministry did not make a determination of the requirement for assistance, stating that because they had determined that the Appellant is not significantly restricted in the performance of daily living activities, it cannot be determined that she requires help to perform them. The Panel notes the assessor's statement that the Appellant requires periodic assistance with laundry, basic housekeeping, carrying purchases, food preparation and cooking. This, taken with the assessor's comments concerning any activities requiring strength and endurance, indicates that the Appellant requires help to perform those activities.

The Panel finds that the Ministry's decision to deny the Appellant's application for PWD designation was not reasonably supported by the evidence. The Panel therefore rescinds the Ministry's decision.