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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The following is a summary of the Reconsideration Decision of May 6, 2009 which denied the appellant her request to be designated a Person with Disabilities:

The minister is not satisfied that you have a severe physical or mental impairment. Your prescribed professional does not confirm that your impairment directly and significantly restricts your ability to perform daily living activities either continuously or periodically for extended periods. Your prescribed professional does not confirm that as a result of direct and significant restrictions, you require help 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 ministry is based on the physician report dated January 15, 2009 and the assessor report, which was done by the same prescribed professional on January 27, 2009. The medical practitioner who did these two reports has indicated that he has known the appellant for the past 13 years. At the request of the appellant's advocate this same prescribed professional did a follow-up question and answer type of form provided by the advocate. This form asks four questions regarding the appellant's eligibility for the Persons with Disabilities designation.

The physician report indicates compression fractures of the lumbar and thoracic spine and osteoporosis. The impairment is estimated to be permanent. The physician report indicates that the appellant is able to walk 4+ blocks, climb 5+ steps, lift 5-15 pounds and remain seated 1 to 2 hours. The only continuous restrictions for Daily Living Activities that have been indicated are daily shopping and basic housework. There are no restrictions for personal self-care, meal preparation, management of medications, mobility in and outside the home, use of transportation and managing finances.

The assessor report indicates walking outdoors and climbing stairs takes longer than normal and carrying purchases home after shopping requires continuous help from another person. All other activities are indicated to be independent except periodic help required with laundry and basic housekeeping. The four questions that the advocate presented to the prescribed professional did not add a lot to his previous assessments. The physical condition was the same diagnosis as the initial report, which was chronic back pain. The answer to 'Does she have a severe impairment?' was 'Yes, difficulty with standing and heavy work'. It was further stated that there are restrictions with heavy work, lifting greater than 5-10 kg, moving furniture and vacuuming. It takes her longer to complete tasks and with physiotherapy the appellant will improve possibly 20-40%.

The appellant provided evidence by answering a number of questions from her advocate regarding the thoroughness of the medical evaluation, which prompted many more questions from the panel. Although the same prescribed professional did both the physician and assessor reports, neither report was done in the presence of the appellant, nor was there any physical examination done other than an x-ray and blood tests. The prescribed professional indicated on the assessor report that he has known the appellant for 13 years but she has been away from the area for most of the past 5 years and in that time has incurred a major back injury. The medical reports indicate that physiotherapy could possibly improve the appellant's ability to function by 20-40 % but no referral was done. The appellant's statements contradicted many of the statements in both the physician and assessor reports, however the legislation requires that a prescribed professional confirmed the restrictions on daily living activities and the requirements for help.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this hearing is the reasonableness of the ministry's decision to deny the appellant the Persons with Disabilities status. To be designated as a Person with Disabilities, the applicant must meet all of the criteria set out in Section 2 of the Employment and Assistance for Persons with Disabilities Act. Specifically, the minister must be satisfied that the appellant has a severe mental or physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts the applicant's ability to perform daily living activities as described in Section 2 of the Employment and Assistance for Persons with Disabilities Act. The restrictions must be either continuous or periodic for extended periods, and as a result of the restrictions, the person must require help to perform those activities.

The ministry's position is that the appellant meets the criteria of the legislation in that she is at least 18 years of age and her medical practitioner has confirmed that her impairment will continue for at least 2 years. The ministry argues, however, that based on the physician and assessor reports, the prescribed professional has not shown that the appellant meets the criteria of requiring help or that her ability to perform daily living activities is directly and significantly restricted either continuously or periodically for extended periods of time. In the Reconsideration Decision, the ministry points out that although the appellant requires more time than is normal she is able to do many of the 'daily living activities' as prescribed in the legislation. Therefore, as it has not been indicated that she is significantly restricted in daily living activities, it cannot be determined that she requires significant help with these activities.

The appellant argues that the prescribed professional did not take the time to discuss her medical disabilities as they pertain to the legislative requirements that must be met to qualify for the Persons with Disabilities designation. She also indicated that she should have been more assertive in describing her abilities, limitations, and the pain caused by doing many daily activities that are a part of being designated as a Person with Disabilities. She lives in one room of a hotel that allows some long-term tenants. It is not located in the downtown area close to many amenities and has very limited facilities for cooking. Her room is on the third floor with no elevator and it is a two-block walk uphill to the nearest bus stop. Consequently she gets very little exercise and relies on the help of a friend to go most places when she does go out. She stated that she walks very little because she is always afraid of falling.

The panel finds that there is no evidence that the appellant has a severe physical or mental impairment that directly and significantly restricts the appellant's ability to perform daily living activities and as a result, she does not require help to do these activities. The panel therefore confirms the Reconsideration Decision as per Section 24 (2) (a) of the EAPWDA.

ATTACH EXTRA PAGES IF NECESSARY