

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

On August 28, 2009 the Ministry decided that the Appellant was not eligible for the Persons with Disabilities (PWD) designation. The Ministry decided that the Appellant did not meet all of the criteria set out in s. 2 of the EAPWDA. Specifically the Ministry was not satisfied that the Appellant suffers from a severe mental or physical impairment; that a prescribed professional did not confirm that an impairment 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 direct and significant restrictions, she requires 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 included a PWD Application with a Self Report (SR) dated May 12, 2009 completed by the Appellant; a Physician Report (PR) dated April 30, 2009 and an Assessor Report (AR) also dated April 30, 2009 and completed by the Appellant's physician; a medical report dated January 9, 2009 from a specialist in Endocrinology and Internal Medicine; a Medical Imaging Report dated March 22, 2009; a medical report by the Appellant's physician dated July 31, 2009; and, a submission prepared by the Newton Advocacy Group Society dated August 18, 2009. On Appeal the Appellant filed a further submission from the Newton Advocacy Group Society dated October 1, 2009.

In the PR the Appellant's physician states that she suffers from the following:

- Graves' Disease since September 2007.
- Exophthalmus since December 2008.
- Suspected meningioma since April 2009.

The Appellant's physician describes the severity of her medical conditions as follows:

"Developed quite severe Graves' disease Sept 07...Partially controlled with medication. Developed Graves' ophthalmopathy as a result of this. Investigations have now revealed an expected meningioma. She has been unable to work since +/- October 08 because of this and I suspect will need numerous further tests and possibly radiation and possibly surgery."

He confirms that her impairment will likely continue for two years or more and states

"Hopefully with treatment will become euthyroid [normal thyroid]. Prognosis with regard to Exophthalmus uncertain. In the process of investigation for ?meningioma. This may require surgery – prognosis good."

Under Functional Skills the Appellant's physician reports that she can walk unaided 4+ blocks; climb unaided 5+ steps; lift 7 – 16 kilograms; remain seated for 2 to 3 hours and has no difficulties with communication. He reports that the Appellant has significant deficits with cognitive and emotional function in the areas of Memory, Emotional disturbance and Attention or sustained concentration as a result of her hypothyroidism. The Appellant's physician adds the following comment:

"Patient had severe Graves' disease and significant hyperthyroidism – Agitation, difficulty concentrating, difficulty with memory and performing tasks. Hopefully this will be controlled with medication. However, she also has exophthalmus – Rx uncertain and also now a ? meningioma which is being further investigated."

In the AR the Appellant's physician reports that the Appellant's ability to communicate is good in two areas – Speaking and Hearing and only satisfactory for Reading and Writing because she has difficulty concentrating. Under Mobility and Physical Ability he reports that she is independent in all six areas but his comment is *"Able to do but physically weak"*.

[REDACTED]

Under Cognitive and Emotional Functioning the Appellant's physician is asked to describe to what degree the Appellant's mental impairment restricts or impacts her functioning. In six of the fourteen areas the Appellant's physician describes no impact. In seven areas he reports minimal impact – Consciousness; Emotion; Insight and judgement; Executive; Memory; Motivation; and, Motor Activity. He reports moderate impact in Attention/concentration. In the comments section he reports "As a result of hyperthyroid state – difficulty with concentrating. Emotionally labile, easily confused affects planning etc. [decreased] memory, [decreased] motivation, agitation".

There are 28 areas of Daily Living Activities and the Appellant's physician states that she is independent in 22 of them. She requires periodic assistance with Laundry; Basic Housekeeping; Going to and from stores; Carrying purchases home; Food preparation; and, Cooking. The physician states "*Lost an extreme amount of weight because of illness. Therefore physical stamina low*". Under Social Functioning the Appellant's physician reports that she needs periodic support/supervision in the area "Able to deal appropriately with unexpected demands" and explains "excess stress due to illness". He reports that she is independent in the other four areas. He reports that the Appellant has good functioning with both immediate and extended social network. He confirms that the Appellant receives the help she requires from her family as she lives with family. She does not require any assistive devices or assistance animals. The Appellant's physician's final comment is "*Hopefully condition will improve and resolve with treatment but suspect this will be more than two years since onset.*"

Clinical records submitted with the PWD Application included a report dated January 9, 2009 from a specialist in endocrinology and internal medicine. The specialist states that the Appellant was hyperthyroid at the time of examination. She reports that the Appellant has symptoms of tremor, irritability and hyperphasia. The specialist diagnoses Graves' thyroid disease and Graves' eye disease. A medical imaging report dated March 22, 2009 reports thyroid ophthalmopathy and a 1.1cm probable meningioma.

In the SR the Appellant reports that she was diagnosed with Graves' disease in September 2007. Her symptoms initially included full body tremors, vomiting, weight loss, extreme fatigue, insomnia, irritability and loss of strength. Medications initially improved the Appellant's symptoms but by January 2009 the Appellant was suffering Exophthalmus and an eye exam revealed a possible meningioma. A brain scan in April 2009 confirmed the presence of a 1.1cm lesion (meningioma). At the time the Appellant applied for a PWD designation she was taking tapazole and propranol for the Graves' disease. She was suffering from very low energy, very low appetite, insomnia, poor memory, poor concentration, headaches, itchy and stinging eyes, blurry vision, and dizzy spells. She needed help from her family for housecleaning and cooking. She would avoid driving at night because headlights bothered her eyes too much.

A medical report dated July 31, 2009 and signed by the Appellant's physician was submitted on reconsideration. This report does not appear to have been prepared by the Appellant's physician but presents as a form filled out and annotated by the Appellant's physician. It is worth noting that the Appellant's physician clearly took pains to do more than just check boxes but added comments, crossed out some categories and clarified the information in this report. The evidence in this report confirms the diagnosis in the PR and notes that the Appellant had surgery to remove the meningioma on June 24, 2009. Evidence in this report includes the following (notes in the square brackets are

from the PR or AR for comparison purposes):

- Severe weight loss
- Symptoms of depression once a week, 3-4 days at a time
- Continuous fatigue
- Irritability – bouts of anger 2-3 days at a time
- Eyes sensitive to light, wears sunglasses
- Severe lack of motivation to do daily living activities
- Problems with memory, has to write things down
- Occasional problems with concentration and attention, easily confused
- Unable to walk greater than 1-2 blocks [4+ blocks], constant fatigue, soreness in legs, shortness of breath
- Cannot remain seated for more than 30 minutes [2-3 hours]
- Unable to climb more than 5+ steps. Must hold railing
- Unable to lift more than 5 – 15 lbs [15 – 30 lbs]
- Trouble regulating diet, forgets to eat, gets help from family [independent]
- Trouble cooking, unable to stand and cook independently
- Significantly restricted doing laundry from severe lack of motivation and fatigue
- Unable to do basic housework due to fatigue, lack of motivation and soreness in muscles
- Cannot go to or from store due to fatigue, muscle soreness and shortness of breath
- Can only carry light purchases
- Getting in and out of vehicles takes twice as long as normal [independent]
- Unable to use public transportation by herself [independent]
- Marginal functioning with immediate social network [good functioning]
- Marginal functioning with extended social network [good functioning]

This report states that the Appellant requires the following assistance:

- Help to prepare nutritional meals
- Intermittent help with basic housework
- Needs 2-3 hours help per week with cleaning
- Needs 2-3 hours help per week with laundry
- Needs 2 hours help per week with grocery shopping
- As an assistive device she uses shower bars in the washroom
- Requires post surgery counselling due to psychological issues relating to recent meningioma removal.

In this report the Appellant's physician gives the following opinions:

- The Appellant is directly and significantly restricted in her ability to do her daily living activities, as a result of the conditions noted above.
- Her mobility is directly and significantly affected by her medical conditions including Graves' Disease
- It is my medical opinion that the Appellant has severe conditions that will last for more than 2 years. I have checked the applicable boxes where I confirm that she is directly and significantly restricted in her ability to perform her daily living activities and requires significant help to perform the activities, noted above.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The Panel must decide whether the Ministry's decision to deny PWD status to the Appellant was reasonable. The Ministry decided that the Appellant did not meet all of the criteria set out in s. 2 of the EAPWDA. Specifically the Ministry was not satisfied that the Appellant suffers from a severe mental or physical impairment; that a prescribed professional did not confirm that an impairment 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 direct and significant restrictions, she requires help to perform daily living activities.

The EAPWDA, s. 2 sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities. "Help" is defined in s. 2(3)(b) of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

The Ministry argues that the evidence does not establish that the Appellant suffers from a severe physical impairment. The Ministry found that the functional skill limitations were in keeping with a moderate degree of impairment. As well the Ministry stated according to the specialist the Appellant could become euthyroid with treatment, especially compliance with her medication. The Ministry also argues that the Appellant does not suffer from a severe mental impairment though they acknowledge the Appellant's physician's report of several significant deficits in cognitive and emotional functioning.

The Appellant argues that her physical impairment is severe – constant fatigue, soreness of legs, weakness in arms and legs, shortness of breath, pain in lower back, sensitivity to light, itchy eyes, no appetite, significant weight loss, headache and dizziness. These physical problems are complicated by cognitive and emotional problems including depression, severe lack of motivation, irritability and memory problems.

The panel finds that the evidence does establish that the Appellant suffers from a severe physical impairment that has cognitive and emotional aspects to it as well. The Appellant was diagnosed with a significant condition – Graves' Disease and developed a significant complication – Exophthalmus which, in the Appellant's words, makes her eyes puffy and irritated to the point that she would like to "pop them out of my face". In addition she had a brain tumor removed in June 2009 and needs counselling to deal with the psychological issues following surgery.

ATTACH EXTRA PAGES IF NECESSARY

The Appellants symptoms are with her constantly and while she does take medication it has not resulted in an abatement of her symptoms. In fact, the Appellant's condition has deteriorated between the time of her physician's reports in the PWD application of April 30, 2009 and the supplemental report of July 31, 2009. The fact that medication might help the Appellant become euthyroid does not mean that her impairment is not severe. The panel finds that the Appellant does meet criterion 2.

The Ministry argues that the Appellant's impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities either continuously or periodically for extended periods in the opinion of her prescribed professional. The Ministry seems to rely on the evidence in the PR and AR of April 30, 2009 but not the report of July 31, 2009. The Ministry notes that the Appellant's physician reports in the AR that the Appellant is independent in 22 of 28 activities.

The Appellant argues that her physician does confirm that her daily living activities are directly and significantly restricted by her impairment.

The evidence in the physician's report of July 31, 2009 cannot be ignored. He states "[Appellant] is directly and significantly restricted in her ability to do her daily living activities as a result of the conditions noted above." The evidence in his July 31, 2009 report supports his opinion. It discloses that the Appellant is now not independent in 9 of 28 activities. Those nine are the activities requiring the most effort. The panel finds that the legislative test is met. The panel finds that the Appellant does meet criterion 4.

The Ministry argues that the evidence does not disclose that the Appellant requires a significant amount of help with the activities that are restricted in the opinion of her prescribed professional. The Appellant argues that she does and that her physician's opinion confirms that she does need assistance.

The panel notes that the legislation does not require the Appellant to establish that she needs a significant amount of help; only that she needs help in respect of daily living activities that are significantly restricted. The evidence from the Appellant's physician in his report dated July 31, 2009 clearly establishes that the Appellant receives help from her family to perform all 9 daily living activities that are significantly restricted. He confirms that she requires help with meal preparation and cooking; basic housework; laundry; shopping; carrying purchases home; getting in and out of a vehicle and using public transportation. Therefore the panel finds that the Appellant does require help to perform those daily living activities that are directly and significantly restricted. The Appellant does meet criterion 5.

The panel further finds that the whole of the legislative test in s. 2 of the EAPWDA is met in the physician's statement in his July 31, 2009 report where he states:



"It is my medical opinion that the Appellant has severe conditions that will last for more than 2 years. I have checked the applicable boxes where I confirm that she is directly and significantly restricted in her ability to perform her daily living activities and requires significant help to perform the activities, noted above."

This panel finds that the Ministry's decision to deny PWD status to the Appellant was not reasonably supported by the evidence and rescinds the Ministry's decision.