

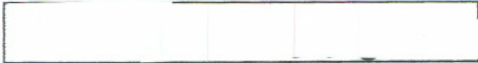


PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision, dated May 6, 2009, in which the Ministry denied the Appellant's request for a Person with Disabilities (PWD) designation and determined that :

- 1) She does not have a severe mental or physical impairment.
- 2) Her impairment does not significantly restrict her ability to perform daily living activities (DLA).
- 3) She does not require the significant help or supervision of another person to perform DLA restricted by her impairment.



PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

The relevant legislation is the Employment and Assistance for Persons with Disabilities Act, (EAPDWA) Section 2 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Part 1 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 Panel considered the information and records that were before the Ministry when the reconsideration decision was made, as well as oral evidence presented by the Appellant at the hearing of this appeal.

The Appellant, in her application for designation as a person with disabilities, adopted the description of her disabilities prepared by her medical practitioner on January 30, 2009, and presented to the Ministry for the Reconsideration decision.

He followed it up with another letter, elaborating on his previous conclusions. It was also presented to the Ministry.

Three of the diagnoses presented by the medical practitioner are mentioned in the Ministry's diagnostic codes. They are Osteo Arthritis (Code 13.3 "Arthritis"), two Cerebral Vascular Accidents (Code 6.0 "Neurological Disorders – other") and Depression Anxiety (Code 5.3 "Mood Disorders" and 5.5 "Anxiety Disorders"). In addition he took into account her illiteracy. He concluded his assessment of the Appellant's condition by finding that, in his opinion, the impact on her daily functioning of the various alleged disabilities, varied from "no impact" to "minimal impact" and "moderate impact." He did not allege that any of the conditions he diagnosed had a "major impact."

She had cerebral vascular accidents in 1994 and 2004 and she suffered from depression and anxiety. She has difficulty climbing stairs. She cannot walk far. And she cannot lift things weighing more than 15 pounds.

In her oral evidence at the hearing of the appeal the Appellant, in answer to a question from the Panel the Appellant explained that she had only four years of school education, and, although she has no difficulty signing her name, she cannot read. Her husband helps her with her banking activities, and, although her inability to read a bus schedule was mentioned by her doctor, she normally travels by car with her husband. She concedes that she does not have a learning disability, and her father had taken her out of school for other reasons. She appeared to have no difficulty answering questions from the Panel.

The Appellant demonstrated to the Panel how she uses a "puffer" for coping with asthma, from which she suffers, to open her lungs.

The Panel admits this oral testimony presented by the Appellant as relevant to the issues.

The Ministry did not present any evidence at the hearing of the appeal.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be determined is whether the Ministry reasonably concluded that the Appellant is not eligible for designation as a PWD because she does not have a severe physical or mental impairment

Section 2(2) of the Act stipulates that the minister must be satisfied that, for a person to be designated as a person with disabilities the person's mental or physical impairment must be severe, must in the opinion of a medical practitioner (a) be likely to continue for at least two years, and (b) directly and significantly restrict that person's ability to perform daily living activities to such an extent as to require help to perform the activities.

On the basis of the evidence presented to the Ministry and the further evidence presented to the Panel at the hearing of her appeal, the Panel concludes that, although the Appellant meets the age requirement and does have physical and mental conditions, which affect the quality of her life, and which are likely to continue for at least two years, none of these conditions amounts to a severe mental or physical impairment that significantly restricts her ability to perform her daily living activities. More specifically, on the evidence presented to the Ministry, as elaborated on the hearing of the appeal by the Appellant, although there is evidence of restrictions, such evidence does not establish the existence of a severe impairment of any of her "daily living activities," as defined in the Regulation.

The Panel adopts the findings of fact and the reasoning contained in the Appendix to the Ministry's Reconsideration Decision, based on the evidence presented to it.

In a written submission, prepared by her advocate, the Appellant stresses the fact that the physician, at p. 34 of the record, wrote that the Appellant should use a cane regularly to reduce the risk of falls. She then correctly makes the argument that such a cane is an "assistive device", as defined in the Act. This argument was apparently not presented to the Ministry. However, the Panel finds that, although the use of a cane would enhance the Appellant's comfort, her physical movements are not severely restricted without it.

Consequently, the additional evidence and the arguments presented by and on behalf of the Appellant at the hearing of the appeal do not, in the Panel's opinion, lead to the conclusion that the Ministry erred in the Reconsideration decision.

For the above reasons the Panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.

ATTACH EXTRA PAGES IF NECESSARY