

[]

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision, dated May 08, 2009, to deny the Appellant's application for a Persons With Disabilities designation.

The Ministry reason for denying the PWD designation was that the Appellant does not meet two of the required five criteria. The Ministry states that the Appellant's impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities and that the Appellant does not require help to perform daily living activities restricted by the impairment, in the form of either an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2 (EAPWDA)
Employment and Assistance for Persons with Disabilities Regulation, Section 2 (EAPWDR)

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 was comprised of the Physician's Report, dated February 02, 2009, and the Assessor's Report, dated February 02, 2009. The Physician also completed the Assessor's Report. These reports formed parts of the original Persons with Disabilities Designation Application, dated March 02, 2009, submitted by the Appellant. The Ministry also had a letter from the Appellant's Advocate to her physician, dated April 24, 2009, with the physician's written reply on the original letter noting he saw her again on April 28, 2009 prior to making this written reply. This letter was available to the Ministry prior to the Reconsideration decision of May 08, 2009.

The Ministry agrees that the Appellant meets the first three criteria for the Persons with Disability designation. The Physician reports that the Appellant has not been prescribed any medication or treatment that would interfere with her ability to perform daily living activities. He also reports that she requires no aides for her impairment. The Physician identifies significant deficits to cognitive and emotional function in the areas of executive, memory, emotional disturbance, motivation, impulse control and attention or sustained concentration which have moderate and major impacts on the Appellant's daily functioning. In the Assessor's Report, the Physician in the Daily Living Activities section, categorized 23 of 32 activities as independent; 7 of 32 activities as requiring periodic assistance (laundry, basic housekeeping, paying for purchases, banking, budgeting, pay rent and bills, able to secure assistance from others); 2 of 32 activities as requiring continuous assistance (able to deal appropriately with unexpected demands; appropriate social decisions). He notes her mental impairment impact on her immediate social network as marginal functioning and on her extended social networks as marginal functioning. He comments that she needs a lot of emotional support and that she should have regular follow up with Mental Health workers and that it was unfortunate that she was unable to keep her follow up appointment with Mental Health last year.

At the hearing, the Appellant verified that she dictated the applicant's portion of the PWD Designation Application and the Request for Reconsideration to her Advocate as she finds it difficult to deal with forms. She verified that she did sign both forms. The Appellant told the Panel about her family situation and problems and how they put stress on her that impacts on her life. The Panel was told that the young granddaughter was returned to her mother in another province as the Appellant felt she could not handle the responsibility of looking after this child. Her eldest daughter, living at home, has a PWD designation and the Appellant is trying to get her into an assisted living situation. She described this daughter as a thirteen year old in the body of a twenty year old. The Advocate proposed that the Physician's response to her direct question asking him, in a letter dated April 24, 2009, to confirm that for four out of seven days the Appellant is unable to cope with daily living activities because she is emotionally overwhelmed. He was asked to address the degree and duration of support/supervision required by the Appellant. The Appellant told the panel that she is now on some medication but she did not know what it was or who had prescribed it. The Appellant told the Panel that she tried to do a stress management session but only went once as it was in a group situation and she wanted one to one. She also informed the Panel that she is now seeing someone in Mental Health. Both she and the Advocate believe this person to be a registered nurse.

At the hearing, the Ministry reviewed the reasons in the Request for Reconsideration for the denial of the PWD designation. It was stated that the Ministry had not interpreted the Physician's response to the Advocates request of April 24, 2009 with the same meaning as the Advocate.

The Panel finds: (a) the Physician's Report, dated February 02, 2009, and the Assessor's Report, dated February 02, 2009, in the initial application for PWD designation were completed and signed; (b) that the Advocate's letter and Physician's response, dated April 24, 2009, was before the Ministry for the Reconsideration decision. The Panel found that the Physician's response in this letter did not expand on the frequency or cite specific examples of the impact the Appellant's impairment has on her daily living activities.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is whether the Ministry reasonably concluded that the appellant did not meet all the criteria required for Persons with Disabilities designation.

EAPWDA Section 2 (2) describes the following criteria required. The minister may designate a person who has reached 18 years of age as a person with disabilities for the purpose of this Act if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and in the opinion of a prescribed professional directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods and as a result of these restrictions, the person requires help to perform those activities. For the purposes of subsection (2), a person who has a severe mental impairment includes a person with a mental disorder, and a person requires help in relation to a daily living activity if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The Ministry argues that the Appellant does not (1) have an impairment that directly or significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods or (2) require help to perform daily living activities.

The Appellant argues that she does qualify for the PWD designation. She quotes her doctor who noted that she has severe problems of a psychological nature and that these cause a significant interference with her ability to manage daily living activities. She indicates that four out of seven days she is emotionally overwhelmed. She cries when she tries to communicate because of her low self-esteem as she feels disrespected by family, neighbours and agencies. Her daughters, who live with her, help with household management. She has experienced financial problems because of depression. She had to relinquish custody of her granddaughter, after four years, because she was not able to manage all the responsibility needed. The Appellant indicated that the doctor did send a referral to Mental Health for her and that she is looking forward to receiving therapy and is now meeting with a local mental health nurse.

The Panel finds that the Appellant does not meet all the requirements of EAPWDA section 2 (2) to establish a PWD designation. The Panel finds that the Assessor does not confirm that this condition directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods of time. The Assessor rated the appellant in the Independent category 23 out of 32 times and in the Periodic Assistance Required category 7 out of 32 times and in the Continuous Assistance Required category 2 out of 32 times. Further, the Panel finds that the Physician/Assessor response to the additional request of April 24, 2009 to address the degree and duration of support/supervision required did not add any additional information to the original Physician/Assessor Reports. The Panel finds that the Assessor does not indicate that the Appellant requires help in relation to daily living activities through an assistive device, significant help or supervision of another person or the services of an assistance animal.

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

ATTACH EXTRA PAGES IF NECESSARY