

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated October 2, 2009 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help to perform DLA.

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 ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration was comprised of a PWD application (Self-report (SR), Physician Report (PR), and Assessor Report (AR)) and the Request for Reconsideration which included a September 3, 2009 letter from the appellant, a July 23, 2008 cardiology consult report, and an operative report respecting surgery on March 24, 2009.

In the PR completed by a general practitioner who has known the appellant for 2 years, the appellant is diagnosed with hypertrophic cardiomyopathy (HCM), chronic renal insufficiency, and hypertension (difficult to control) with the comments "chronic poor stamina – very limited endurance, easily fatigued by walking 2-3 blocks needs to rest. Prone to SOBOE if overdoes activity". Regarding Functional Skills, the appellant is able to walk 2-4 blocks unaided on a flat surface, climb 5+ steps unaided, lift under 5 lbs, and has no limitations with remaining seated or difficulties with communication; no deficits with cognitive and emotional function are indicated. The appellant is unable to continue working due to fatigue and poor stamina.

In the AR completed by the same physician, the assessor writes that the appellant is "easily fatigued – needs to pace self – takes longer to do simple tasks eg. washing hair. Cannot lift any significant amount. Restricted in activities" and that "all activities need to be paced slowly to accommodate fatigue". The appellant's Ability to Communicate is good. Regarding Mobility and Physical Ability, the appellant is reported to take significantly longer with walking indoors, walking outdoors, climbing stairs, standing, and lifting ("needs to rest after any exertion eg. walk 2 blocks or 6 steps – stops and rest; respecting carrying/holding the assessor writes "limits lifting". Regarding DLA, the appellant is reported to be independent in 3 aspects of 'personal care' with the remaining 5 aspects taking significantly longer, 'basic housekeeping' takes significantly longer and help with lifting is noted, 2 aspects of 'shopping' take significantly longer and independence is indicated for the remaining 3 aspects; the appellant is independent in all aspects of 'meals', 'paying rent and bills', 'medications', 'transportation', and 'social functioning'. The assessor reports good functioning with both immediate and extended social networks. The appellant receives "help with lifting/laundry/groceries" from friends and does not use any assistive devices or the services of an assistance animal.

The July 23, 2008 cardiology consult report states that there is clear evidence of HCM and risk of sudden cardiac death. The March 24, 2009 operative report indicates that the appellant has become progressively more symptomatic from her HCM.

In the September 3, 2009 letter, the appellant writes that she has a debilitating heart condition that significantly impacts her on a daily basis: she sleeps between 12-16 hours per day; suffers from shortness of breath walking short distances on flat surfaces; cannot climb a flight of stairs without extreme fatigue; and, depends on friends for assistance with grocery shopping, paying bills and attending medical appointments.

At the hearing, the appellant stated that her heart condition has completely changed her life as she was once gainfully employed and active but now has difficulty performing simple tasks. She stated that having a heart that does not work properly affects everything else in her life. As she has qualified for CPP disability benefits, she queried what ministry category she would fit into if she does not fall within the ministry's criteria for PWD designation given that she is unable to live a normal life due to her permanent medical condition.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is whether the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment and that her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that the appellant does not require help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

The appellant's position is that she is disabled by a severe medical condition which continually impacts all aspects of her daily life and leaves her unable to have a normal life.

The ministry's position, based on the appeal record, is that the evidence does not establish the existence of a severe physical or mental impairment that, in the opinion of a prescribed professional, significantly restricts DLA or necessitates help with DLA.

Regarding the existence of a severe mental impairment, the panel finds that there is no diagnosis of a mental impairment and that the evidence of the prescribed professionals indicates that there are no deficits with cognitive and emotional function and that the appellant has good social functioning. Therefore, the panel finds that the ministry reasonably determined that the appellant does not have a severe mental impairment.

Regarding the existence of a severe physical impairment, the panel finds that the evidence establishes that the appellant suffers from hypertrophic cardiomyopathy (HCM), chronic renal insufficiency, and hypertension (difficult to control), which result in "chronic poor stamina", "very limited endurance", and restricts her ability in terms of physical Functional Skills and all aspects of Mobility and Physical Ability. In the AR, the physician writes that the appellant "needs to rest after any exertion". Based on the above evidence, the panel finds that the ministry was not reasonable in concluding that a severe physical impairment has not been established.

ATTACH EXTRA PAGES IF NECESSARY

Regarding the appellant's ability to manage DLA, the panel finds that the evidence of the prescribed professional establishes that the appellant is able to independently manage all aspects of DLA except those that involve lifting (laundry, basic housekeeping, and carrying purchases home). Therefore, the panel finds that as the appellant is independently able to manage almost all DLA without any assistance, the ministry reasonably concluded that, in the opinion of a prescribed professional, the appellant's DLA are not directly and significantly restricted either continuously or periodically for extended periods.

Regarding the need for help with DLA, the panel finds that as the evidence of the prescribed professional is that the appellant is able to manage the majority of aspects of DLA independently, the ministry reasonably determined that a prescribed professional has not confirmed that the appellant needs the significant help or supervision of another person or the use of an assistive device or assistance animal to manage her DLA.

The panel finds the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.