

PART C – DECISION UNDER APPEAL

The Reconsideration Decision dated May 11, 2009 denied the Appellant's application for designation as a Person with Disabilities (PWD). The stated reason was that the Appellant's application did not meet three of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWD) namely, the following criteria;

The minister is not satisfied that the Appellant has a severe physical or mental impairment;

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

It cannot be determined that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

The Appellant was diagnosed with depression, anxiety, thoracic and lumbar spinal scoliosis, right shoulder arthritis, and GERD. The Panel reviewed the Appeal Record which included:

- Notice of Appeal dated May 15, 2009
- Request for Reconsideration April 01, 2009
- Reconsideration Decision dated May 11, 2009
- Appellant's application April 24, 2009
- Physicians Report dated February 13, 2009 (PR)
- Assessor's Report dated February 13, 2009(AR)
- Supplemental Medical Opinion: Checklist of Restrictions to Daily Living Activities(DLA's) Due to Physical and Mental Impairments.(" the SMO Checklist ")
- Supplemental Medical Opinion: Help Required and Severity (" the SMO help required")
- Extracts from legislation
- PWD case profile sheet
- Friend's support letter dated April 27, 2009
- Neighbour's support letter, undated

The Ministry stated that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD Act. The Appellant satisfied the criteria of age and duration of the impairment but the Ministry was not satisfied that the remaining 3 criteria were satisfied, namely severity, restriction on performance of daily living activities (DLA's) and help required.

The Appellant introduced new evidence that was a note from her doctor dated June 8, 2009 that was accepted by the Panel as evidence in support of information and records before the ministry pursuant to sec 22 (4) of the Employment and Assistance Act.

The Advocate stated that the Appellant lives alone but her adult son will be coming to live with her soon. She states that the Appellant takes Tylenol for pain, and anti-depressant for her depression. The Appellant states that she has an allergy to anti-inflammatory pain medications such as advil and ibuprofen so she suffers from chronic pain. She says she is very depressed and has had the condition for 15 years. She says her feelings of depression get worse when her pain increases. She said that the Doctor has not fully explained her condition. She says she has thoughts of suicide and needs help from her friends. She states that she is still depressed since separating from her husband approximately 3 years ago. She says that it is difficult to cope in her ethnic community because she has no husband. She feels that she has a severe mental impairment and a severe physical impairment. She submits that she needs help from her friends to do her vacuuming and to help with other housework and that this was evident from the testimony of her witness and the supporting letters. The Appellant referred to the new evidence which contained a statement from her Doctor stating that her condition was not improving in spite of taking meds.

The Ministry referred to the PR and the AR, both completed by the Appellant's Doctor who is a prescribed professional. The Doctor described her Functional Skills in Part D of the PR as follows: that the Appellant could walk more than 4 blocks and climb more than 5 steps. She was limited to lifting 5 to 15lbs and limited to sitting less than 1 hour. In Part A question 3 of the AR with regards to Mobility and Physical Ability, the Doctor indicated the Appellant as Independent for the categories listed as: walking indoors, walking outdoors, climbing stairs, and standing. Periodic assistance was noted for lifting, carrying and holding. In Part C of the AR the Doctor indicated the Appellant is Independent in 24 of 28 aspects of DLA's. In Part D of the PR question 6 on the topic of functional skills he indicated a significant deficit in 4 of 12 aspects as follows: Memory, Emotional disturbance, Motivation and Impulse Control. He reported marginal functioning in her immediate and extended social networks. In Part B of the AR under the heading Cognitive and Emotional Functioning the Assessor noted only 1 (emotional) of 14 aspects that had a major impact on her functioning.

The Doctor did not report any assistive device or assistance animal was needed by the Appellant. The Ministry stated that the SMO Checklist did not show specific restrictions except that she might be affected with the use of public transport. In the question portion the Doctor affirmed that the Appellant's ability was restricted and circled "intermittently" but wrote in the comment section of the SMO that "due to anxiety/depression might be unable to use public transport" to perform them. The Ministry said that in the SMO Help Required the Doctor circled "No" to the question whether he was of the opinion that the Appellant has a severe physical and/ or mental impairment and that the Ministry gives more weight to the opinion of the Prescribed Professional than the opinion of the friend and neighbour.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under Appeal is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Section 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act as follows:

"(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal."

In order to qualify for designation as a Person with Disabilities (PWD) as defined in the EAPWD Act the Appellants circumstances must satisfy all of the five criteria set out in Section 2 of the EAPWD Act. The Ministry states that the Appellant has met the first two criteria of age and duration, but has not met the remaining three criteria.

The Ministry stated that the Appellant did not qualify for PWD for the following reasons:

1. because the Doctor stated in the SMO Help Required, that in his opinion the Appellant did not have a severe physical or mental impairment,

ATTACH EXTRA PAGES IF NECESSARY

2. The Doctor who is a prescribed professional has not given his opinion that the Appellant was directly and significantly restricted from performing her DLA's either continuously or periodically for extended periods. He stated that the Appellant was independent in 24 of 28 aspects of DLA's, was able to walk more than 5 blocks and climb more than 5 stairs, He reported in the SMO checklist that the Appellant was only restricted in the use of public transport and wrote that the Appellant does suffer from chronic anxiety and depression which has some episodic flare ups.
3. The Doctor did not list an assistive device used by the Appellant or the services of an assistance animal or significant help from another person.

The Appellant's position was that the Medical Reports (AR and PR) did not give an accurate representation of her condition. She said that she needs significant help to do her daily living activities and that her friends help her. She said her condition was severe because she was in pain and needed Tylenol and that she was severely depressed and had been suffering from depression for 15 years. She submitted that her friends supported her position and wrote and stated that she was unable to manage her daily living activities and that they had to help her and check on her regularly. The witness stated that the Appellant went to the witness's home for overnight care and support at times and that her friend and neighbour helped her in the Appellant's home at times.

However the Panel finds it is the opinion of the prescribed professional as to direct and significant restrictions to DLA's, and help required that is needed to satisfy the legislation. The evidence of her friends did not carry as much weight as the prescribed professional's opinion. The witness was the friend who was the author of the letter dated April 27, 2009. She repeated evidence contained in the substance of her letter of support.

The Panel finds that the medical evidence did not support a finding that the Appellant had a severe physical or mental impairment because in the SMO the Doctor indicated that she did not have a severe mental or physical impairment and in the AR, Part B he wrote that "anxiety and depression are moderately severe". In the PR, Part B the doctor wrote that the Appellant suffers from moderately severe anxiety. Therefore the Panel finds that the Appellant did not satisfy the third criteria of severity.

The Panel finds that the medical evidence was not sufficient to support a finding of direct and significant restrictions to DLA's. The Appellant is able to manage to perform the majority of her DLA's as shown in Part C of the AR and in Part A of the AR, as well as the items noted in the Supplemental Medical Opinion. The Panel finds that the 4th criteria (direct and significant restrictions to DLA's) was not shown.

There was no medical evidence of the use of an assistance device or the services of an assistance animal. The Panel could not determine from the evidence that the help from friends amounted to significant help from another person or persons with her DLA,s.

For these reasons the Panel finds that the Reconsideration Decision was reasonably supported by the evidence and confirms the Ministry Decision.