



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In the reconsideration decision dated November 16, 2009, the ministry determined that the appellant was not eligible for the Persons with Disabilities (PWD) designation. The ministry found that the appellant did not meet all of the legislative requirements for the designation. In particular, the ministry found:

- The appellant has met the age requirement.
- The appellant's medical practitioner confirms that the appellant's impairment is likely to continue for at least two years.
- The minister is not satisfied that the appellant has a severe physical or mental impairment.
- The appellant's prescribed professionals do not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The appellant's prescribed professional do not confirm that as a result of direct and significant restrictions, the appellant 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

The evidence before the ministry at reconsideration included:

- PWD designation application, section 2 – Physician Report, dated July 10, 2009 (the “Physician Report”);
- PWD designation application, section 3 – Assessor Report, dated July 10, 2009 (the “Assessor Report”);
- A letter from the appellant, undated, describing the appellant’s condition and how it affects her life and ability to take care of herself;
- A letter from the appellant’s adult daughter, dated February 19, 2009; and
- Employment and Assistance Request for Reconsideration dated September 21, 2009 with attached letter from appellant.

The Physician Report, signed by the appellant’s doctor indicated the following:

- Diagnosis of lateral epicondylitis, which results in chronic pain exacerbated with any usage, difficulty with grasping/gripping, low fatigue tolerance, inflammation, unable to sustain fine motor coordination, sleep disturbances; glaucoma, which results in loss of peripheral vision and poor night vision; and cervical spondylolysis
- Functional Skills: appellant can walk unaided on a flat surface for 2 to 4 blocks; climb 5+ steps unaided; can lift 2 to 7 kg with the left hand (unable to sustain); cannot lift with right hand; can remain seated 1 to 2 hours. No significant deficits with cognitive and emotional function.
- Daily Living Activities: the impairment directly restricts the appellant’s ability to perform DLA as follows: continuous restriction (unable to use right hand) in personal self care, meal preparation, basic housework, and daily shopping (no lifting). She is severely restricted in any activities of daily living requiring the use of her right hand. The appellant needs assistance in DLA which she currently receives from her adult children – meal preparation, cooking, all housework, shopping, any lifting.
- Additional comments: because of her medical conditions, any activities of daily living requiring the use of her right hand are severely restricted. She is significantly dependent on her adult children to assist with meal preparation, cooking, housework, shopping and any lifting.

At the hearing, the appellant’s advocate pointed out with respect to the Physician Report that another advocate for the appellant had filled out the Physician Report in draft form and then sent it to the appellant’s doctor, who then made some corrections and additions to the draft and signed the draft off as the Physician Report.

The Assessor’s Report, signed by a prescribed professional (registered social worker), indicated the following:

- Appellant’s ability to communicate is poor in reading and writing as she has poor vision and is unable to use her right hand
- Mobility and Physical Ability: She needs periodic assistance from another person for walking outdoors – at night

she is usually accompanied; she needs periodic and continuous assistance from another person, or is unable, to lift, carry and hold (no lifting with right hand and limited left hand)

- No issues with cognitive or emotional functioning
- Daily Living Activities: appellant needs continuous assistance with dressing, grooming, and needs periodic assistance and assistive device for bathing. She needs continuous assistance from another person to do laundry and basic housekeeping, going to and from stores, reading prices and label, making appropriate purchases and carrying purchases home. She is unable to use her right hand, no lifting, and overall pain and restricted movement - everything takes at least 2 to 4 times longer, and all household and many personal [tasks] require assistance.
- Daily Living Activities (continued): needs periodic assistance for meal planning (pain/ fatigue) and safe storage of food, and continuous assistance for food preparation and cooking (unable to use right hand). She needs continuous assistance for banking (most done by adult children). She needs continuous assistance for filling/refilling prescriptions and taking as directed (needs help opening). She needs periodic assistance getting in and out of a vehicle (unable to use right hand) and using public transit (must have seat and some assistance). All moving about and completion of tasks takes at least 2 to 4 times longer due to pain restricted movements.
- Assistance provided: her adult children must provide daily assistance with ADLs. Continuous assistance with household cleaning, shopping and meal preparation and much outdoor mobility.
- Equipment required but not currently being used: grab bars to prevent falls in bathroom.
- Additional information: the combination of conditions is severely restricting and client requires assistance with all of her household activities of daily living. Mobility is also severely restricted.

At the hearing, the appellant's advocate sought to have a letter written by the appellant's doctor dated December 10, 2009 (the "Doctor's Letter") be accepted by the panel into evidence. After reviewing the contents of the Letter, the panel decided to admit the Doctor's Letter into evidence under section 22(4)(b) of the Employment and Assistance Act as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

The Doctor's Letter indicated as follows:

- The appellant's doctor is a specialist in physical medicine and rehabilitation.
- The appellant has been a patient of the doctor for nearly 6 months, during which time the doctor has been seeing her on a monthly basis with regard to her symptoms involving neck and right upper extremity pain.
- In the doctor's opinion, the appellant has a severe physical impairment. Specifically, her symptoms involving chronic pain, numbness and weakness involving the right hand, restricted range of motion involving the right shoulder and neck, along with associated symptoms of fatigue and impaired sleep related to her pain, limit her ability to perform most daily living tasks inside and outside the home.

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- The appellant's impairments significantly restrict her ability to perform a range of daily living activities continuously, including but not limited to personal care routines, cooking, cleaning, laundry, shopping, and use of public transportation. She is unable to perform these tasks independently and even with help provided by family members, it will require the appellant to take 2 to 4 times longer than normal to perform these tasks.
 - The doctor has noted the appellant's difficulties and restrictions with daily living activities over the past 6 months and opines that these restrictions will likely persist indefinitely.

At the hearing, the appellant's advocate referred to the decision of the British Columbia Supreme Court in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461 and submitted that the principles contained in the decision are binding on this Tribunal.

The ministry did not appear at the hearing, although it was duly notified of the hearing date and time.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be decided is the reasonableness of the ministry's reconsideration decision to deny the appellant the Person with Disabilities (PWD) designation.

The EAPWDA, section 2, sets out the criteria for a person to be designated as a PWD:

2(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.

The reconsideration decision indicated that the appellant met the age requirement and that the appellant's physician confirmed that the appellant's impairment is likely to continue for at least two years.

The appellant's advocate argued that the appellant meets all the criteria for the PWD designation. He says that the Physician Report, the Doctor's Letter and the Assessor Report all indicate that the appellant has a severe physical impairment; that the impairment significantly restricts the appellant's ability to perform daily living activities and the appellant is as a result dependent on family members for continuous daily help.

The panel finds that based on the evidence provided by the doctor (a medical practitioner under the legislation) and the Assessor (a prescribed professional under the legislation), it was not reasonable for the minister to conclude (a) that the appellant did not have a severe physical or mental impairment; (b) that the impairment did not directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and (c) that the appellant does not require help with daily living activities as result of direct and significant restrictions. The evidence of the appellant's doctor, as indicated in the Physician's Report is that the appellant has a severe physical impairment in the form of cervical spondylolysis; right lateral epicondylitis; and glaucoma. In the Doctor's letter, the appellant's doctor also mentions carpal tunnel syndrome and chronic myofascial-type pain involving her neck. The Physician's Report gave no indication of a severe mental impairment.

With respect to the restrictions on the appellant's daily living activities that arise from the impairment, the Doctor's Letter indicates that the appellant's impairment significantly and continuously restricts her ability to perform a range of daily living activities, including but not limited to personal care routines, cooking, cleaning, laundry, shopping, and use of public transportation. These views are supported by the Physician's Report and the Assessor's Report.

ATTACH EXTRA PAGES IF NECESSARY