



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration decision dated December 15, 2009 which denies the appellant's request for Persons with Disabilities (PWD) designation. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria as per Section 2 of the Employment and Assistance PWD status. In that:

- She does not have severe mental or physical impairment
- Her impairment does not significantly restrict her ability to perform daily living activities
- She does not require the significant help or supervision of another person to perform daily living activities restricted by her impairment

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 Regulations (EAPWDR), section 2



PART E – SUMMARY OF FACTS 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 appellant seeks PWD designation. Her original application for PWD designation was made on August 17, 2009. On October 27, 2009, the Ministry denied that request. On November 27, 2009, the appellant submitted a request for reconsideration. On December 15, 2009, the Ministry completed its review of the request for reconsideration and again denied the request.

The evidence before the Ministry included the appellant's PWD application which included a physician's report dated July 10, 2009, a letter signed by the appellant's physician and a letter from the appellant, both date November 20, 2009 and a report from the appellant's Registered Clinical Counselor.

In assessing her functional skills, the physician reports no skill limitations and indicates the appellant is independent in mobility and physical ability. The appellant is able to perform independently most of the daily activities, with the exception of daily shopping, mobility outside the home, use of transportation and social functioning, which are continuously restricted. The physician's report indicates the appellant has one deficit with cognitive and emotional function. The appellant has suffered from agoraphobia since 1997.

In the letter date November 20, 2009, signed by the appellant's physician, he confirms the condition is likely to continue for more than 2 years and that her Anxiety Disorder "must be considered a severe impairment". It also confirms the appellant "has a severe impairment that significantly restricts her ability to perform daily living activities and as a result of those restrictions requires help to perform those activities".

The appellant stated that she has suffered with agoraphobia for at least ten years and the condition appears to be getting worst. She agrees with the doctor's report that she is able perform her daily living activities (DLA), but only if there is a support person present in the house. She requires the support person to be close by (in sight) when she ventures out to do shopping etc. If left alone she has anxiety/panic attacks, which significantly restricts her ability to perform her DLAs. These attacks include episodes of palpitations, tunnel vision, black outs and intense fear. The family had considered treatment by a psychologist but because of the waiting list (1 year) and the cost (\$1200) they elected counseling instead. She has been attending counseling with a Registered Clinical Counselor for seven months and is taking medication for depression and the black outs. She was employed but had to quit because of the anxiety attacks and was placed on UI disability. She was on assistance (Persons With a Persistent Multiple Barriers status) for 2 years previously and has been on basic assistance for the last eleven months since coming off of UI disability.

The appellant's advocate (a Registered Clinical Counselor) has been counseling the appellant for the past seven months and reviewed her report with the panel. The Counselor's report agrees with the Physician's report that the Appellant can perform most of her DLA's in the home, under a stress free environment and if a support person is present in the house but when left alone or under stress she can suffer an anxiety attack which leaves the appellant "almost immobilized" and "cannot problem

solve, control her impulses, retain information and has experienced blackouts". The report also agrees with the physician's report that the appellant requires constant supervision of a support person to perform her DLAs (shopping, use of transportation etc.) outside the home environment. In assessing the appellant's Cognitive and emotional functioning the report indicated a major impact in 2 areas (emotion and attention/concentration), moderate impact in two areas (Consciousness and memory) and minimal impact in the areas of body functions, impulse control, Motivation and other emotional problems. She supported the appellant's claim that she requires a support person present at all times in order to perform her DLAs in a normal manner. She stated that they have made progress in dealing with the agoraphobia, but progress is slow.

The Ministry representative was not in attendance. The Panel confirmed that the ministry had been informed as per EAA Section 86(b) and continued with the hearing.

REASON FOR PANEL DECISION

The issue on this appeal is whether the Ministry reasonably concluded that the appellant's request for a PWD designation should be denied.

Section 2(2) of the EAPWD Regulations provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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.

The Ministry agrees that the appellant has met the age requirement and the medical practitioner has confirmed the impairment is likely to continue for at least 2 years. However, the Ministry argues that the evidence falls short of proving that:

- the appellant has a severe physical or mental impairment
- the impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods
- as a result of direct and significant restrictions, the appellant requires help to perform daily living activities

The physician's initial assessment indicates the appellant is able to perform most of her DLA's within the home independently but requires continuous supervision outside the house. He also indicates that the appellant requires continuous support/supervision in 4 of 5 aspects of her social functioning but does not indicate the degree or duration of the support required. In subsequent correspondence, the physician states the appellant is "currently impaired by anxiety disorder" and the appellant's Anxiety Disorder "must be considered a severe impairment" that "significantly restricts her ability to perform daily living activities and as a result of those restrictions, the appellant requires help to perform those activities".

The appellant agrees that she can perform DLA's but only if a support person is present. She argues that she does have a severe mental impairment and that, by virtue of the fact that she is severely limited in her ability to perform activities without a support person present, her impairment does limit her ability to perform daily living activities continuously or periodically for extended periods.

The Appellant's advocate's (a Registered Clinical Counselor) report supports the physician's assessment that the appellant does suffer an anxiety disorder and without the supervision of a support person suffers panic attacks in which she becomes "almost immobilized" and "cannot function emotionally, problem solve, retain information and has suffered blackouts" during these attacks.

It is the opinion of the panel that the anxiety attacks are not the reason the appellant is restricted in her ability to perform her DLAs. Like a heart patient, it is not the heart attack that restricts the patient's activities but the heart condition that caused the heart attack. In the case of the appellant, it is not the anxiety attacks but her mental impairment that triggers those episodes when she is in a stressful situation or left alone. A key factor in controlling these episodes is the constant presence of a support person, thus the appellant requires significant help or supervision of a support person.

The appellant's recent history, (previously being on assistance for 2 years, having to quit her job and being placed on UI disability and currently on assistance) indicates that her mental impairment has restricted her ability to perform her daily activities continuously or periodically for extended periods.

The panel agrees with the physician's assessment that the appellant has a severe impairment that significantly restricts her ability to perform daily living activities and as a result of those restrictions the appellant requires help to perform those activities and that the impairment will continue for 2 or more years. The panel also concludes that her impairment restricts her ability to perform the above activities continuously or periodically for extended periods.

The finds the Ministry's decision was not reasonably supported by the evidence and rescinds the decision.