



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated January 14, 2009, which held that the appellant did not meet all of the legislative criteria required for designation as a person with disabilities (PWD) under section 2 of the Employment and Assistance for Persons with Disabilities Act. The ministry concluded:

- she does not have a severe mental or physical impairment
- that her impairment does not directly and significantly restrict her ability to perform daily living activities, either continuously or periodically for extended periods, and
- that as she is not significantly restricted with daily living activities, it cannot be determined that she requires the help of another person to perform her daily living activities.

PART D – RELEVANT LEGISLATION

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 included

- the appellant's application for Persons with Disabilities designation dated November 13, 2008,
- the Physician Report dated October 10, 2008 and the Assessor Report dated October 20, 2008, by the same doctor.
- Letter from Surgical dermatologist dated October 30, 2008.

The medical evidence indicates that the appellant suffers from lichen sclerosis of the vulva, depression and neurodermatitis of the arms and legs. She has had the lichen sclerosis for 10 to 12 years but it has become worse in the past year or so. The doctor indicates the appellant is able to walk 4+ blocks and climb 5+ steps unaided and lift 15 to 35 lbs. The doctor also states the appellant has pain which limits mobility and sitting for periods. She takes medication in the form of gabapentin, anti-depressant medication and also clobetasol for the skin condition. The doctor has indicated the appellant is independent in all daily living activities but her depression has a moderate to major impact on her daily functioning. The doctor also states there is no requirement for assistance from another person or assistive devices to compensate for her physical impairment.

The ministry is of the opinion the diagnosis does not indicate a severe physical or mental impairment. Though the medical condition limits the appellant's ability to mobilize or sit for extended periods there is nothing of significance in overall functionality and she is able to function independently.

The appellant told the Panel that after reading the criteria for PWD status she realizes she does not meet the requirements at this time. The pain and discomfort she suffers from the lichen sclerosis prevents her from holding down a job. She admits she does not need someone with her all the time but receives periodic assistance from one of her daughters who lives nearby. She states the various medications have had side-effects and her "liver is in trouble". She also required blood transfusions and was recently informed that she has contracted Hepatitis C which she attributes to the transfusions. The appellant also said her doctor has her on methadone treatment to assist in her various ailments even though she does not have an addiction problem. Her daughter helps with lifting, shopping etc as her bladder tends to give out if she lifts any heavy items such as a jug of milk or bag of sugar.

The panel is satisfied that the evidence does not confirm a severe physical or mental impairment as defined by the legislation.

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 does not meet the legislative requirement to be designated as a PWD under section 2 of the EAPWD Act because :

- she does not have a severe physical or mental impairment
- in the opinion of a prescribed professional, her daily living activities (DLAs) are not directly and significantly restricted either continuously or periodically for extended periods and
- that as she is not significantly restricted with daily living activities, it cannot be determined that she requires significant help or supervision of another person, the use of an assistive device or the services of an assistance animal to perform those activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Ministry must be satisfied that the person is over 18, 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, that 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 those restrictions, the person requires help to perform those activities.

Section 2 of the EAPWDR defines "daily living activities" in relation to persons who have a severe physical or mental impairment. Section 2(3) of the EAPWD Act further specifies that "... a person requires help in relation to a daily living activity if, in order to perform it, the person requires.. (ii) the significant help or supervision of another person."

The ministry's position is that the appellant meets the requirements of being at least 18 years of age and her impairment is likely to last at least two years. However, the ministry contends that the evidence does not indicate that the appellant has a severe physical or mental impairment, or that the impairment directly and significantly restricts her daily living activities either continuously or periodically for extended periods, or that as a result she requires the significant help of another person, assistive device or assistance animal to help her perform those activities.

The appellant, having studied the requirements for PWD status, agrees that she does not meet the required criteria at this time. However, she argues that there must be some way of granting her assistance with this physical impairment that is also causing her depression. She states she will work with her caseworker and advocate to find a resolution.

Under the applicable legislation the appellant is required to meet all of the five criteria.

- She has met the age requirement and her doctor confirms that the impairment is likely to last for at least two years.
- The Panel finds that the appellant does not have a severe physical or mental impairment.
- The Panel finds that her daily living activities are not directly and significantly restricted either continuously or periodically for extended periods. Her doctor stated she is able to walk 4+ blocks and climb 5+ steps unaided and lift 15 to 35 lbs. She is independent in all daily living activities.
- The Panel finds that the medical evidence indicates the appellant does not require the help of another person to perform those daily living activities restricted by her impairment.

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