

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated November 9, 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:

- that the appellant does not have a severe mental or physical impairment ,
- that the information from a prescribed professional does not confirm that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods and
- her prescribed professional does not confirm that as a result of direct and significant restrictions, she 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

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 evidence before the Ministry was:

- An application for PWD designation dated July 8, 2009 with a Physician Report and an Assessor Report completed by the same doctor on July 7, 2009.
- A letter written by the same doctor dated September 6, 2009 where it is stated that the appellant has been a patient since 2002, she suffered a messy separation, was left destitute and struggled to look after her daughter. In 2005, she was diagnosed with breast cancer, underwent extensive treatment and a mastectomy and her daughter who was her only support left the country. The doctor states that due to these events, the appellant suffers from chronic depression that is prolonged and incapacitating and affects her daily living activities (DLAs) in areas such as shopping, cooking, preparing for the day and also her social life. She is under therapy and has become reclusive, avoiding socializing.

The appellant submitted a letter to the Panel from the same doctor dated December 4, 2009. In it, he reiterates the diagnosis and information from the letter of September 6, 2009. He adds that while the appellant is encouraged to maintain her function, it is with difficulty and assistance and she is handicapped by her depression which also affects her daily functioning. Her daughter leaving the country aggravated her condition. The Panel found this evidence was admissible under section 22(4) of the *Employment and Assistance Act (EAA)*, as it was information in support of the information that was before the minister when the Reconsideration Decision was made.

In the Physician's report in the Application for PWD designation, the doctor diagnosed the appellant with locally advanced cancer of breast since 2005 leading to mastectomy, chemotherapy, radiation and depression and notes she has poor family support. In functional skills the doctor notes the appellant unaided can walk 2-4 blocks, climb 5+ steps, can lift 5-15lbs and remain seated for 1 to 2 hours. Deficits in cognitive and emotional functions are noted in the 5 areas of executive thinking, memory, emotional disturbance, motivation and attention but none in the other six areas listed.

In the Assessor Report, the doctor notes that the appellant has poor reading and writing skills, needs periodic assistance to lift but notes she is able to manage most regular chores. The doctor notes that the appellant's mental impairment which he lists as chronic depression has no impact on 2 functional areas, minimal impact on 5 areas, moderate on 7 areas and has a major impact on no areas of the appellant's functioning. In DLAs, the doctor notes that the appellant is independent in performing all areas of personal care, meal preparation, all areas involving transportation but notes that the appellant only needs periodic assistance with laundry, housekeeping, going to stores, making appropriate choices, paying her rent and bills and filling prescriptions. She is noted as having marginal functioning with her immediate and extended social networks and needing periodic assistance with all of her social functioning as it is affected by her divorce, depression and anxiety. There are no notes to indicate the frequency or duration of assistance that is required with those activities requiring periodic assistance.

The appellant wrote on the PWD application that she now has diabetes and migraines, her surgery causes her some pain and her life is disrupted.

The Ministry relies on the reconsideration decision which listed the information from the PWD Physician and Assessor Reports. They note that the appellant meets the age and duration criteria in the legislation but conclude that the medical information does not indicate a severe mental or physical impairment and that the information from a prescribed professional does not confirm that the appellant's impairment directly and significantly restricts her ability to perform DLAs either continuously or periodically for extended periods and that her prescribed professional does not confirm that as a result of direct and significant restrictions, she requires help to perform daily living activities.

The Panel finds as fact that the appellant has the medical conditions as described by the doctor and finds that she is restricted in her DLAs to the extent described by the doctor and assessor in the medical information. Although the appellant notes she has migraines and diabetes, the doctor did not diagnose these conditions in the medical information.

[REDACTED]

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 is not eligible for PWD designation as she did not meet all of the legislative criteria required for the designation, namely that she does not meet the following three legislative criteria:

- She does not have a severe mental or physical impairment ,
- The information from a prescribed professional does not confirm that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods and
- her prescribed professional does not confirm that as a result of direct and significant restrictions, she requires help to perform daily living activities.

Section 2 of the EAPWDA sets out the criteria 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 DLAs 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 DLAs in relation to persons who have a severe physical or mental impairment.

The ministry acknowledges that the appellant is over 18 years of age and that the doctor confirms that her conditions are likely to continue for at least two years. The ministry contends that the medical information does not establish that the appellant has a severe mental or physical impairment that directly and significantly restricts her ability to perform her DLAs and she does not need significant help to perform these activities.

The appellant and her advocate argue that she meets the criteria for PWD designation because the medical information notes that she is severely impaired by a combination of physical and mental health conditions and she therefore requires help to perform DLAs. The advocate points out that the doctor's letter notes that the appellant's depression is incapacitating and she is handicapped by it and the Panel should infer from these words that the appellant has a severe impairment with significant restrictions.

The Panel finds it reasonable that the ministry concluded from the medical information that the appellant does not have a severe physical or mental impairment. Although the information notes the appellant has a serious illness and some limitations, it does not confirm that this illness causes a severe physical or mental impairment; the report confirms that the appellant is able to do most tasks requiring mobility and physical abilities independently and, although the doctor has noted some deficits to cognitive and emotional functioning, none of the deficits are noted as having a major impact on the appellant's ability to perform her DLAs. The doctor notes that the appellant's mental impairment which he lists as chronic depression has a major impact on no areas of the appellant's functioning and that the appellant is independent in performing all areas of personal care, meal preparation, all areas involving transportation but noting that she needs periodic assistance with laundry, housekeeping, going to stores, making appropriate choices, paying her rent and bills and filling prescriptions. The doctor does not explain the periodic assistance required by noting the frequency or duration of assistance required. Although the advocate argues that Panel should infer from the doctor's letters that the appellant has a severe impairment with significant restrictions, in the Panel's opinion, this additional medical information does not establish a severe mental or physical impairment as no further details are given in the letter of the degree of incapacity or how this restricts the appellant in performing her DLAs and of the possible assistance required, if any.

The Panel finds also that it was reasonable for the ministry to conclude that the impairment does not directly and significantly restrict the appellant in her ability to perform her DLAs continuously or periodically for extended periods. The appellant is noted as performing most DLAs independently and while some periodic assistance is noted, the frequency or duration of assistance required is not noted. As the medical information is that the appellant performs the majority of her DLAs independently, the Panel finds it was reasonable for the ministry to conclude that the prescribed professional does not confirm that as a result of direct and significant restrictions, the appellant requires help to perform DLAs.

Therefore, the Panel concluded that it was reasonable for the Ministry to find that the appellant does not meet the legislative criteria for PWD designation set out in EAPWDA, section 2.

The Panel finds the Reconsideration Decision is supported by the evidence and confirms the Decision.