

PART C – Decision under Appeal

APPEAL#

The decision under appeal is the Reconsideration Decision dated January 27, 2010 wherein a Reconsideration Officer determined that the Appellant was not eligible for the Persons with Disabilities ("PWD") designation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the "Act"), s. 2.
Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), s. 2.

PART E – Summary of Facts

APPEAL #

On August 28, 2009 the Appellant submitted a PWD application (the "PWD Application") to the Ministry of Housing and Social Development (the "Ministry"). The PWD Application was signed by the Appellant on August 23, 2009.

On November 18, 2009 an adjudicator for the Ministry determined that the Appellant did not meet the eligibility requirements for a PWD designation.

On December 16, 2009 the Appellant requested an extension of time to submit her Request for Reconsideration to the Ministry.

The PWD Application was comprised of the following:

1. "Persons With Disabilities Designation Application Section 1 Appellant Information Part B - Disabling Condition Self Report of [the Appellant]" (the "Self Report");
2. "Persons With Disabilities Designation Application Section 2 Physician Report" dated August 12, 2009 completed and signed by the Appellant's family physician (the "Physician Report");
3. "Persons With Disabilities Designation Application Section 3 Assessor Report dated August 17, 2009, completed and signed by the Appellant's family physician (the "Assessor Report")
4. a letter dated November 10, 2009 from a medical doctor and Physical Medicine and Rehabilitation Specialist (the "Assessment Letter").

In the Self Report the Appellant stated that:

- (1) she suffers from type 1 diabetes, high blood pressure, bad cholesterol and severe arthritis in her neck, which results in excruciatingly severe, chronic, radiating pain to her arms and back and that she suffers from headaches, dizziness, depression, anxiety, insomnia, memory loss and lack of motivation;
- (2) her conditions drastically affect her ability to perform daily living tasks and she is unable to walk more than a block, can not remain seated for more than 15 minutes at a time, can not climb more than a flight of stairs, can not take public transport as she is unable to sit or stand on the bus or wait for a bus, and forgets to take her medication;
- (3) her daughter organizes her entire life for her and places medication in front of her, does all the cooking and meal planning, and does all of the other household chores; and
- (4) she requires assistance to perform daily living tasks and the money she would receive from a PWD designation would help her to obtain the assistance she needs to adequately perform necessary daily activities.

The Physician Report stated as follows:

- (1) under the heading "A - Diagnoses" it is indicated that the Appellant's impairment included diabetes

mellitus type 1 - poorly controlled, high blood pressure, osteoarthritis of cervical spine with nerve pinch, and a frozen right shoulder;

(2) under the heading "B - Health History" it is indicated that the Appellant has been prescribed medication and/or treatments that interfere with her ability to perform daily living activities, in particular, her insulin injection which will be a lifetime requirement limits her daily activities and her right arm pain interferes with her right arm activities;

(3) under the heading "D - Functional Skills" it is indicated that the Appellant can walk less than one block, can climb 2 to 5 steps; can not lift objects, can remain seated less than 1 hour, has memory issues, suffers from emotional disturbance, loss of motivation, lack of attention or sustained concentration and moderate depression;

(4) under the heading "E - Daily Living Activities" it is indicated that the impairment directly restricts the Appellant's ability to perform daily living activities and that the following activities are restricted: (a) personal self care; (b) meal preparation; (c) basic house work; (d) daily shopping; and (e) social functioning. It is also indicated that the Appellant's daughter helps the Appellant in her daily activities; and

(5) under the heading "F - Additional Comments" it is indicated that the Appellant's physical impairments limit her self care and activities.

The Assessor Report stated as follows:

(1) under the heading "B - Mental or Physical Impairment" it is indicated that the Appellant's ability to read and write is only satisfactory due to her sore arm, that she requires continuous assistance from another person or is unable to lift, carry or hold objects and that she can climb 5 stairs at a time;

(2) under the heading "C- Daily Living Activities" it is indicated that the Appellant requires assistance related to the impairments that directly restrict her ability to manage in the following areas: (a) personal care (periodic assistance required in respect of dressing, grooming, bathing); (b) basic housekeeping (periodic assistance required in respect of laundry and basic housekeeping); (c) shopping (continuous assistance is required from another person or she is unable to carry purchases home); and (d) meals (continuous assistance is required from another person or the Appellant is unable to prepare foods, cook or store food); and

(3) under the heading "D - Assistance Provided For Appellant" it is noted that the help that is required for daily living activities is provided by family and friends and that the assistance that is required is "doing chores in house".

The Assessment Letter stated as follows that:

(1) the Appellant has chronic neck and shoulder pain related to cervical spondylosis with myelopathy and adhesive capsulitis with associated rotator cuff tendinopathy; and

(2) the ongoing pain and weakness associated with her conditions limit the Appellant not only in her activities of daily living, but also in her ability to work as she is unable to tolerate sitting or standing for greater than 15 - 20 minutes, can not lift objects above shoulder level or carry objects greater than 10 pounds, and is to refrain from movements involving neck extension.

On January 18, 2010 the Appellant's advocate submitted a letter in support of the Appellant's application for PWD designation and enclosed a new outline of information completed by the Appellant's family physician dated December 14, 2009 indicating that:

- (a) the Appellant has severe physical impairment that is affecting her ability to perform daily living tasks;
- (b) lifting or carrying anything will severely aggravate the Appellant's disability as she has severe osteoarthritis; and
- (d) the Appellant needs help for daily activities.

On January 27, 2010 a Reconsideration Officer made the Reconsideration Decision which indicated that the Ministry found that the Appellant did not meet all five of the legislative requirements for approval of a PWD designation.

On February 10, 2010 the Appellant filed a Notice of Appeal to the Employment and Assistance Appeal Tribunal.

On February 25, 2010 the Appellant's representative provided email correspondence dated February 22, 2010 from the Appellant's daughter which was accepted into Evidence by the Panel for the limited purpose of providing collaborating information and which indicated that:

- (a) the Appellant's chronic pain prevents her from moving around and enjoying her life normally. This causes her to become more isolated than usual;
- (b) the Appellant's daughter does household chores, grocery shops, prepares meals provides medicine and insulin injections;
- (c) the Appellant's diabetes is uncontrollable at times which leads to extremely high blood sugar and insulin side effects which causes the Appellant to have panic attacks, shortness of breath, headaches, dizziness, high anxiety, hot flushes and insomnia; and
- (d) it is difficult for the daughter to take care of the Appellant while balancing preparation for college and university.

The hearing took place on March 2, 2010. A representative for the Ministry did not attend, although duly served with the Notice of Appeal. Information provided to the Panel indicated that the Ministry received the Notice of Hearing by fax transmittal on February 17, 2010.

The Panel proceeded to hear this appeal in the absence of a representative from the Ministry pursuant to ss. 86(b) of the Regulation.

The Appellant's advocate referred to the Hudson v. Employment Assistance Appeal Tribunal, 2009 (BCSC) 1461.

PART F – Reasons for Panel Decision

APPEAL #

The issue in this case is whether the Ministry's decision to deny PWD status to the Appellant was reasonably supported by the evidence.

The Reconsideration Decision indicated that although the Appellant satisfied three of the five criteria required to be eligible for a PWD designation, she failed to show that:

(a) in the opinion of a prescribed professional, her severe physical impairment directly and significantly restricts her ability to perform daily living activities, either continuously or periodically for extended periods, and

(b) in the opinion of a prescribed professional, as a result of those restrictions she requires help to perform those activities, in the form of:

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

Section 2(2) and (3) of the Act sets out five eligibility criteria for the PWD designation 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 (B.C. Reg. 196/2007)

(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.

Section 2 of the Regulations defines "daily living activities" and "prescribed professional" as those terms are used in s. 2 of the Act and states as follows:

(1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner. (B.C. Reg. 196/2007)

The Panel finds as a fact that, in the opinion of a prescribed professional, the Appellant's severe physical impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods and that as a result of those restrictions she requires help to perform those activities in the form of significant help or supervision of another person.

This finding is based upon the definition of "daily living activities" found in the Regulations and upon a review of the totality of the evidence. The evidence includes the opinion of the Appellant's family physician as set out in the Assessor Report wherein he certified his opinion that:

- (a) the Appellant requires "continuous assistance" from another person and is unable to lift, carry or hold objects and that the Appellant can climb 5 stairs at a time,
- (b) the impairments directly restrict the Appellant's ability to perform daily living activities, including the following:
 - (i) shop for personal needs, (a daily living activity listed in ss. 2(1)(a)(iii) of the Regulations) as she requires continued assistance and is unable to carry purchases;
 - (ii) prepare own meals, (a daily living activity listed in ss. 2(1)(a)(i) of the Regulations), as the Appellant requires "continuous assistance" from another person or is unable to prepare foods, cook meals or store foods.

The opinion of the Appellant's family physician set out in the Assessor Report that she requires "periodic assistance" to perform personal hygiene and self-care activities (daily living activities listed in ss. 2(1)(a)(vii) of the Regulations) and to perform housework to maintain her place of residence in

an acceptable sanitary condition (a daily living activity listed in ss. 2(1)(a)(v) of the Regulations).

The Ministry did not provide any evidence which refutes or contradicts the opinion set out in the Assessor Report, in particular the opinion that the Appellant requires "continuous assistance" or "periodic assistance" in respect to the above-noted daily activities.

The Panel finds that other evidence corroborates the opinion in the Assessor Report, in particular:

(1) The Self Report which indicates that the Appellant's conditions drastically affect her ability to perform daily living tasks. The Appellant stated that she is unable to walk more than one block, can not remain seated for more than 15 minutes at a time, can not climb more than a flight of stairs, can not take public transportation; and forgets to take her medication.

(2) The Physician Report from the Appellant's family physician, which indicates that the Appellant's impairment directly restricts the Appellant's ability to perform daily living activities. The Physician's report indicates that the Appellant's daughter helps the Appellant in her daily living activities and that the Appellant's condition restricts her in the following "daily living activities", namely,

(a) meal preparation (a daily living activity listed in ss 2(1)(a)(i) of the Regulations),

(b) housework (a daily living activity listed in ss. 2(1)(a)(v) of the Regulations),

(c) daily shopping (a daily living activity identified in ss 2(1)(a)(ii) of the Regulations).

(3) The Assessment Letter from a prescribed professional indicates that the Appellant's condition limits the Appellant in her activities of daily living. It notes that the Appellant cannot tolerate sitting or standing for greater than 15 to 20 minutes; can not lift objects above the shoulder level or carry objects greater than 10 pounds; and is to refrain from movements involving neck extension, this restricting her from the following daily living activities, namely,

(a) meal preparation (a daily living activity listed in ss 2(1)(a)(i) of the Regulations),

(b) housework (a daily living activity listed in ss. 2(1)(a)(v) of the Regulations),

(c) daily shopping (a daily living activity identified in ss 2(1)(a)(ii) of the Regulations),

(d) using public or personal transportaion (a daily living activity listed in ss. 2(1)(a)(iv) of the Regulations).

(4) The letter from the Appellant's daughter, which was received by the Panel in support of the appeal, which indicates that she provides the Appellant with extensive assistance in daily living activities, including:

(a) preparing for meals,

(b) shopping for personal needs, and

(c) performing housework to maintain the Appellant's place of residence.

The Panel therefore finds that:

(a) there was sufficient evidence to find that the Appellant's severe physical impairment directly and significantly restricts her ability to perform daily living activities, either continuously or periodically for extended periods, and

(b) in the opinion of a prescribed medical professional, as a result of these activities, the Appellant requires help to perform these activities in the form of significant help or supervision from another person.

The Panel, therefore, finds that the Reconsideration Decision was not reasonably supported by the evidence and rescinds the decision.