

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The following is a summary of the Ministry Reconsideration Decision of October 15, 2010 which denied the appellant the Persons with Disabilities (PWD) designation:

You do not have a severe impairment

Your impairment does not directly and significantly restrict your ability to perform daily living activities.

You do not require significant help or supervision of another person to perform daily living activities restricted by your 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 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 at the time of reconsideration was:

- a letter from the appellant, received by the tribunal December 3, 2010
- a medical report for Persons with Persistent Multiple Barriers the appellant's physician dated November 29, 2010
- a self report describing the appellant's impairment submitted March 24, 2010
- the physician report section of the PWD application and the assessor report both completed by the appellant's physician and dated March 29, 2010
- a letter from the appellant's physiotherapist dated July 23, 2010

The appellant states in her letter to the tribunal that she has been in the process of applying for PWD status for the past 3 years and feels she was led to believe she was eligible. The appellant states she feels she requires the assistance of an advocate but due to unforeseen circumstances was unable to coordinate one in the allotted time frame.

The medical report for PPMB states the appellant's primary medical condition as chronic back pain with an onset in 1976. The secondary medical condition is cognitive impairment as a result of head injury. The treatment is listed as physiotherapy which is sporadic due to the appellant's difficulty in attending and Naprosyn /Tylenol which the appellant uses as required. The physician states these conditions are likely to last 2 years or more and that the conditions are not episodic in nature. The physician states the appellant has difficulty with lifting, bending, prolonged standing or sitting.

The appellant's self report outlines the restrictions she faces on a daily basis. She describes being unable to sit for more than ½ an hour and that standing is extremely difficult. She states that she has constant pain even through the night and is unable to lay on her right or left side due to the pain she has in her hip, shoulder and pelvis. She says that she has shooting pain in her legs while she sleeps and is consequently never rested. The appellant states that she is unable to perform any activity that involves a push/pull movement like vacuuming, floor washing, window washing or cleaning the bathtub. The appellant states that she has been on disability previously and has been declared unemployable by the federal government on 2 occasions in 1985 and 1988.

The physician completed both the physician and assessor reports dated March 29, 2010.

In these reports the physician states the appellant's medical conditions as head injury- cognitive impairment and chronic pain syndrome as a result of multiple traumas. The appellant's cognitive function is permanent and her chronic pain is unlikely to change. The physician states the appellant is able to walk 4+ blocks and can climb 5+ stairs unaided. She is able to lift less than 2 kg and can remain seated for less than 1 hour. The appellant's deficits with cognitive and emotional functioning include memory loss, lack of motivation and poor executive planning. The physician clarifies this by stating that the appellant has attempted to work in the community but is unable, due to cognitive impairment to keep a job. The physician states that the appellant requires periodic assistance from another person in only two area of her DLA's - basic housework and social functioning. The physician has not indicated if the appellant requires this assistance periodically for extended periods of time.

When acting as the assessor, the physician states that the appellant is independent in the areas of walking indoors and out, climbing stairs and standing. She requires periodic assistance for lifting and carrying. The physician states that the appellant depends on others to get firewood and to do any heavy tasks around her home. In the area of cognitive and emotional functioning, the appellant is described as having no impact on DLA's in 4 areas, minimal impact in 8 areas and moderate impact in 2 areas. This impact is summarized as "cognitive abilities and self esteem are low. She isolates herself in her rural cabin which exacerbates her impaired quality of life."

In the area of DLA's the appellant is independent in all areas except basic housekeeping and carrying purchases home. The appellant's daughter occasionally helps her with housework and groceries. The physician goes on to say that the appellant can physically manage her DLA's but often does not for reasons of decreased motivation, self esteem and self interest.

The physician states that "assistance for about 4 hours per week to help with heavy chores and provide social contact would make an enormous difference".

The physiotherapist states in her letter of July 23, 2010, states that the appellant appears to be in poor physical condition. Her lumbar spine is not mobile and is very weak. The appellant would certainly at this point not tolerate a job which required prolonged sitting, bending, twisting or lifting.

The ministry states that the appellant meets the age requirement of at least 18 set out in the legislation and that her impairment is likely to continue for two or more years.

The ministry states that the appellant does not meet the legislative requirements contained in Employment and Assistance for Persons with Disabilities Act, Section 2 (2) and (3).

In its reconsideration decision, the ministry used the appellant's self report dated March 24, 2010 and the physician and assessor reports, dated March 3, 2010, both completed by the physician.

The ministry reviewed the appellant's self report in conjunction with the physician report and the assessor report and found that the impacts and restrictions to the appellant's functioning do not establish a severe mental or physical impairment.

The ministry found that the physician indicates that the appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, can lift under 5 lbs, and can remain seated for less than 1 hour. In the assessor report the physician indicates that the appellant requires periodic assistance with lifting and carrying/holding and comments that the appellant depends on others to get firewood and do heavy tasks around the house. The physician further comments that the appellant would benefit from 4 hours per week of assistance with heavy chores and that she is unable to manage firewood to heat her home. The physician states the appellant is independent with walking indoors and out climbing stairs and standing and in the assessor report indicates that she can complete the majority of her daily living activities independently. As clarification the assessor indicates the appellant requires periodic assistance with basic housekeeping and carrying purchases home and that she receives occasional assistance for these activities from her daughter. The ministry stands by its decision that a severe physical impairment has not been established.

The ministry maintains that the information provided by the appellant does not establish a severe mental impairment. The physician indicates that the appellant has significant deficits with cognitive emotional functioning in the areas of executive, memory and motivation. The physician also comments that the appellant isolates herself which exacerbates her quality of life. The physician and the physiotherapist both indicate that at this time the appellant is unable to keep a job. The ministry states that employability is not a criterion used to determine PWD eligibility.

The physician also indicated that the appellant is independent in 3 areas of social functioning: appropriate social decisions, able to deal appropriately with unexpected demands and able to secure assistance from others. The appellant requires periodic assistance with 2 areas of social functioning: developing and maintaining relationships and interacting appropriately with others, however she has not indicated whether the appellant requires this assistance periodically for extended periods. While the physician indicates the appellant has marginal functioning with both immediate and social networks, this does not establish a severe mental impairment.

The ministry maintains that its decision to deny PWD designation to the appellant was correct.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's decision to deny the appellant the Persons with Disabilities status.

To be designated as a Person with Disabilities, the appellant must meet all of the criteria set out in Section 2 of the Employment and Assistance for Persons with Disabilities Act.

2(2) The minister may designate a person who has reached the age of 18 years of age as a person with disabilities... 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.

2(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.

The ministry agrees that the appellant meets two of the legislative criteria.

The appellant has reached the age of 18.

A medical professional has confirmed that the impairment is likely to continue for at least 2 years.

The ministry's position is that the evidence does not establish the appellant has a severe physical or mental impairment that in the opinion of a prescribed professional, significantly restricts DLA or necessitates either continuous or periodic help for extended periods with DLA's.

The appellant's position is that she does have a severe physical impairment which significantly restricts DLA's. She maintains that she has constant pain both day and night and that she is unable to vacuum, clean the bathtub, wash the floor or windows. She states that she has been on disability before and has been declared unemployable due to medical reasons by the Federal Government. She states she does not know how she will survive without financial assistance.

ATTACH EXTRA PAGES IF NECESSARY

The panel finds that the appellant meets the legislative requirement of 18 years of age.

The physician confirms that the appellant's condition will last for at least 2 years and that it is not episodic in nature.

The panel finds that the appellant did not demonstrate that she has a severe physical impairment. The information contained in the physician report with regard to a severe physical impairment demonstrates an appellant who is independent in all DLA's except basic housekeeping and carrying purchases home. The panel finds that the prescribed professional has not provided enough evidence to confirm a severe physical impairment which directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods and as a result of those restrictions, requires help to perform those activities. The Assessor states that the appellant requires occasional help from her daughter with groceries / housework.

There is minimal impact in the areas of bodily functions, emotion, impulse control, insight and judgment, attention/concentration, memory, motor activity, other neuropsychological problems. Moderate impact is seen in the areas of executive planning and motivation. The Assessor states that the appellant can physically manage DLA but often does not for reasons of decreased motivation, decreased self esteem and decreased self interest.

Therefore the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

In the area of severe mental impairment, the assessor states that the appellant's cognitive abilities and self esteem are low. She isolates herself in her rural cabin which exacerbates her impaired quality of life.

The assessor goes on to explain that the appellant can physically manage DLA's but often does not for reasons of decreased motivation, decreased self esteem and decreased self interest. In the area of social functioning, the appellant is independent in making appropriate social decisions, dealing appropriately with unexpected demands and in her ability to secure assistance from others. She requires periodic support in developing and maintaining relationships and in interacting appropriately with others. The assessor comments that assistance for 4 hours per week to help with heavy chores and provide social contact would make an enormous difference.

The panel finds that the prescribed professional has not provided enough evidence to confirm a severe mental impairment which requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. Therefore, the ministry reasonably concluded that the evidence does not establish a severe mental impairment.

The appellant, physician and assessor all note that the appellant is unable to work. The legislation is clear that employability is not a criterion for the PWD designation.

The panel finds that the appellant does not meet the legislative requirements under Section 2 EAPWDA as neither a severe mental or physical impairment has been demonstrated.

APPEAL # _____

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