

**PART C – DECISION UNDER APPEAL**

On November 27, 2009 the ministry made a reconsideration decision which denied the appellant's request to be classified as a Person With Disabilities (PWD). The ministry confirms the appellant meets the age and duration of impairment criteria. The ministry, however, finds that the information on the PWD Application does not confirm that the appellant has a severe physical or mental impairment that directly and significantly restricts her ability to perform daily living activities (DLAs) either continuously or periodically for extended periods.

The ministry further finds the appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, the appellant requires help to perform DLAs.

**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 was contained in the PWD Designation Application and consisted of a Self Report (SR) completed by the appellant and dated June 1, 2009, a Physician Report (PR) completed by the appellant's physician, dated June 3, 2009 and an Assessor Report (AR) also completed by the Appellant's physician, dated June 3, 2009. As well, the Appellant made a statement in her Request for Reconsideration dated January 4, 2010 and included a copy of her physician's exam notes dated October 10, 2009.

In the SR the appellant stated she is in bad pain most of the time from a chronic kidney condition. She is on painkillers and sometimes must go to the hospital for injections for pain. She also has migraine headaches, which make her unable to stand lights, sounds, smells and motion. Because of this, she states she gets depressed, has no motivation or energy to do anything.

In the PR, the appellant's physician diagnoses her with kidney stones, migraine headaches, anxiety, depression and polycystic ovarian syndrome. He describes her medical condition as, "Severe prolonged physical and mental disability". He states that her prescribed medication causes drowsiness. The physician confirms the appellant's impairment is likely to continue for 2 years or more. He assesses her functional skills as being able to walk 1 to 2 blocks, lift under 2 kg, remain seated less than 1 hour. The physician indicates the appellant has difficulties with cognitive and emotional functioning in the areas of consciousness, executive, memory, psychotic symptoms, emotional conditions, motivation, motor activity and attention. He explains that medication for pain results in drowsiness and lack of focus. Depression and anxiety cause lack of motivation. The physician concludes by stating that severe and prolonged mental and physical disabilities require assistance and supervision.

In the AR, the assessor (the appellant's physician) indicates her ability to communicate is poor and that she takes significantly longer to manage walking indoors and outdoors, climbing stairs, standing, lifting and carrying/holding. He adds these restrictions occur when the appellant is in pain or is depressed. Under cognitive/emotional functioning, the assessor indicates a major impact on functioning through poor attention, moderate impact on functioning through bodily functions, consciousness, emotion, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychotic problems and other emotional problems. The assessor indicates minimal or no impact from impulse control and insight. Regarding DLAs, the assessor indicates the appellant requires continuous or periodic assistance with personal care (limited due to pain, lack of motivation, difficulty moving), basic housekeeping (activity aggravates condition), shopping (requires transportation, unable to lift), meal preparation (unable to lift heavy pots, needs frequent breaks), taking medication (forgets or double doses) and getting in and out of vehicles (when in pain). For social functioning, the assessor indicates continuous support/supervision required for developing and maintaining relationships (stress and anxiety prevent social relationships) and for dealing appropriately with unexpected demands (anxiety). The assessor indicates marginal functioning in dealing with the appellant's immediate social network and very disrupted functioning in dealing with extended social network. He says the appellant needs counseling and referral to victim services. He indicates some help is provided by family and friends, but also needs help from homecare, mental health support, daily supervision, childcare and meals on wheels. The assessor concludes by stating the appellant has severe, prolonged physical and mental disabilities requiring daily assistance and supervision.

The physician's note dated October 10, 2009 relates to the appellant's most recent kidney exam and raises the possibility of medullary sponge kidney disease.

In her written statement of January 4, 2010 the appellant recounts her medical problems, including kidney stones, congenital kidney disease, polycystic ovarian syndrome and adenomyosis, all of which cause considerable pain and require pain medication. She says she is often bedridden and receives help from her 5 children, ranging in age from 4 to 17. She says she is in constant pain all the time but still manages, as a single parent, to take care of her children.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision to deny PWD status to the appellant because it found that the information on the PWD Application did not confirm that the appellant had a severe physical or mental impairment that directly and significantly restricted her ability to perform daily living activities (DLAs) either continuously or periodically for extended periods and that the appellant's prescribed professional did not confirm that as a result of direct and significant restrictions, the appellant required help to perform DLAs.

The EAPWDA Section 2 sets out 5 criteria which must be met for PWD designation:

"(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."

The EAPWDR Section 2(1)(a) sets out the daily living activities referred to in the Act as follows:

"2 (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."

The ministry argues that while the appellant meets the age and duration-of-impairment criteria, it is not satisfied the appellant has a severe physical or mental impairment because the information provided on the PWD application does not establish a severe impairment. The appellant's physician indicates communication ability is poor when the appellant is on pain medication and when migraine is acute. The frequency and duration of these periods is not specified. The physician indicates the appellant takes significantly longer with all activities relating to mobility and physical activity, but there is no indication of how much longer. The ministry argues that the assessment of the appellant's physical ability does not demonstrate that she is unable to perform the related activities or requires help to perform them. The ministry concludes that the information provided on the PWD application indicates the appellant encounters limitations with her physical functioning when she is on pain medication, experiencing acute migraine or is depressed but that this does not establish a severe physical impairment. With respect to mental impairment, the ministry argues that while the information on the PWD application indicates that the appellant's cognitive and emotional functioning is moderately

impacted by the effects of pain medication, depression and anxiety, this does not establish the appellant has a severe mental impairment.

With regard to DLAs, the ministry argues that while the information on the appellant's PWD application indicates the appellant's ability to perform DLAs is limited by pain and lack of motivation due to depression, the supporting narrative and the assessment of the appellant's physical, cognitive and emotional functioning do not support a finding that the appellant's impairments directly and significantly restrict her ability to perform DLAs either continuously or periodically for extended periods.

The ministry also argues that while the assessor confirms the appellant requires homecare, mental health support, daily supervision, childcare and Meals on Wheels, the assessment of the appellant's physical, cognitive and emotional functioning and restrictions to her ability to perform DLAs do not support a finding that the appellant needs this level of assistance. Therefore, the ministry concludes, it cannot be established the appellant requires significant help with DLAs that are directly and significantly restricted either continuously or periodically for extended periods. In summing up, the ministry finds the appellant meets the age and duration-of-impairment criteria but does not meet the other criteria necessary to be designated a PWD.

The appellant argues that in both the PR and the SR, her physician has added the following note, "Severe prolonged disabilities requiring continuous supervision". The appellant also argues that the ministry failed to consider her physician's exam report of October 12, 2009, which describes a more serious condition than originally diagnosed, medullary sponge kidney disease. The appellant says this strengthens the medical opinion that her impairment is severe.

Regarding physical DLAs, the appellant notes the ministry argues she is independently able to manage her medication. However, the confirmation from her prescribed professional on the PWD application states that she requires supervision to prevent missing doses or doubling up on them. The appellant argues that she requires significant help from her 5 children to cope with her DLAs. Without this help, the appellant argues she would have to move in with family/friends to support her. The appellant argues that her prescribed professional confirms, on the PWD application, that she requires periodic or continuous assistance, or that she takes significantly longer to prepare own meals, shop for personal needs, use transportation, perform basic housekeeping, moving about indoors and outdoors, perform personal care, and manage personal medication.

Based on the information in the PWD application and supported by the physician's October 12, 2009 exam report, the panel finds the appellant has a severe physical impairment.

Based on the opinion provided by the appellant's prescribed professional on the PWD report, the panel finds the appellant is directly and significantly restricted in her ability to perform the majority of DLAs.

Based on the opinion provided by the appellant's prescribed professional on the PWD report, the panel finds that she requires help to perform those DLAs.

The appellant meets the five criteria necessary to be designated a PWD. The ministry reconsideration decision is not supported by the evidence, and the panel rescinds it.