

PART C – DECISION UNDER APPEAL

The Decision dated January 19, 2010, denied the Appellant's application for designation as a Person with Disabilities. The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWDA) namely, the following criteria;

The minister is not satisfied that the Appellant has a severe mental or physical impairment

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

The minister is not satisfied that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, sec 2
Employment and Assistance for Persons with Disabilities Regulation , sec 2

PART E – SUMMARY OF FACTS

The Appellant is diagnosed with cysts in bones of right wrist, ganglion left wrist, spina bifida lumbro-sacral spine, disc disease in neck and right deltoid bursitis .The Panel reviewed the Appeal Record which included administrative information and the following:

- Notice of Appeal dated January 25, 2010
- Reconsideration Decision dated January 19, 2010
- Request for Reconsideration November 23 2009
- Appellant's Application for PWD dated August 24, 2009
- Physicians Report (PR)
- Assessor's Report (AR)
- Extracts from legislation
- Letter dated December 10, 2009 from Support Worker
- Chiropractic Information
- Accident History Questionnaire

The Appellant provided evidence that she has been unable to obtain a family doctor in her new location and therefore has had difficulty in obtaining medical information to support her position. She was able to return to her previous doctor and become his patient once again but it is difficult to see him as he is in a remote small town that is a two and a half hour drive for her. He was her previous doctor but she states that for some unknown reason her previous medical records are not available and she believes they were shredded when her file was closed. She submits that he did not fill out the reports properly because he didn't ask her questions about the AR and he has no idea what she can and cannot do. She submits that she has difficulty doing her daily living activities because of the chronic pain but she is determined to do her cleaning and cooking even with the chronic pain and the danger of spilling hot pots due to the pain in her wrists. She states that her recent appointment with her doctor resulted in a new prescription for the pain medication , celebrex which the doctor wants her to try. She states that she currently manages the pain as best she can with advil, heat wraps , and a heating pad. She states that she uses a neck extender device at least 2 times a month to relieve pressure on the vertebrae and provide some relief from pain. She was unable to obtain a new medical report from her doctor at this time. The Appellant introduced supporting testimony from her witness who is a retired pastor who has known her for over 20 years. The witness did not provide new information but confirmed the Appellant's statements that she suffered from progressive pain that has increased in the last few years. He confirms his opinion that the Appellant is chronically depressed in her current situation due to her health and partly due to a change in her personal living arrangements. The Appellant's evidence which was corroborated by the witness is that her daily living activities have become more difficult for the Appellant as she lives alone now and previously she lived with a partner that was able to help her perform her daily living activities. The Advocate submits that the Appellant has severe pain and a severe physical impairment and she is restricted from performing her daily living activities and now needs help to perform them. In addition her condition has affected her mentally and she now suffers from depression.

The Ministry submits that the Appellant's application for PWD designation does not meet the legislative criteria; specifically she does not have a severe mental or physical impairment , a prescribed professional has not provided an opinion that she has an impairment that directly and significantly restricts her ability to perform daily living activities, and, as a result of those restrictions

requires significant help to perform them. The Ministry's evidence is that the Appellant's doctor indicated in question 6 of the PR that the Appellant had no significant deficits with cognitive and emotional function. In question 4 of the AR he marked 14 of 14 aspects of cognitive functioning as not being impacted by a mental impairment and he commented that the Appellant had no mental problems.

The Ministry submits that the Appellant's evidence of a severe physical impairment was not supported by the Appellant's doctor. The Appellant's doctor indicated in Part D of the PR that the Appellant could walk unaided for 1-2 blocks, climb 5 or more stairs unaided, lift 5 to 15 lbs, remain seated for less than 1 hour. In question 3 of the AR he states that she is independent for walking indoors and standing, that she takes significantly longer walking outdoors and for walking upstairs where she must stop after 5 steps. He marks that she needs periodic assistance for lifting and carrying. In Part C of the AR he rates her as independent in 25 of 28 aspects of daily living activities. He did not complete a rating for the social functioning section of Part C of the AR. The Ministry finds that the Prescribed Professional had not provided the opinion that the Appellant is directly and significantly restricted from performing her daily living activities or that she needs help from another person to perform them other than periodic assistance for carrying and lifting which includes laundry and basic housekeeping.

PART F – REASONS FOR PANEL DECISION

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Sec 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act 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

(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."

In order to qualify for designation as a person with disabilities (PWD) as defined in the EAPWDA the Appellant's circumstances must satisfy all of the five criteria set out in Section 2 of the EAPWDA. The Ministry states that the Appellant has met the first two criteria of age and duration but has not met the remaining three criteria of severity, direct and significant restriction to daily living activities (DLA's) and the requirement of significant assistance from another person, assistive device or assistance animal to perform DLA's.

The Appellant believes she is eligible for the PWD status due to her medical conditions and believes her doctor was not accurate in his assessment of how her health issues affect her daily living activities because he does not know her well and he doesn't see her attempting to perform the daily living activities. She uses a neck extension device recommended by her chiropractor to help relieve neck pain. She submits that her quality of life has significantly deteriorated in the last few years and

since her disease is progressive it will only get worse. She hoped to get more recent medical information but finds it very difficult to get a local family doctor and has been unable to do so yet. She feels that she has had very little control of being able to provide updated and accurate medical information to the Ministry.

The Appellant's doctor reports in question 4 of the AR that she does not have a mental impairment and does not indicate any cognitive or emotional impairment have any impact on her daily living activities. The Appellant's doctor indicated in Part D of the PR that the Appellant could walk unaided for 1-2 blocks, climb 5 or more stairs unaided, lift 5 to 15 lbs, remain seated for less than 1 hour. In question 3 of the AR he states that she is independent for walking indoors and standing, that she takes significantly longer walking outdoors and for walking upstairs where she must stop after 5 steps. The Panel finds that this evidence is consistent with a moderate impairment but not a severe physical impairment and therefore the Appellant has not met the criteria of establishing severity.

While the evidence indicates that the Appellant's conditions cause some restrictions in daily living activities especially in lifting and carrying, the prescribed professional generally indicates that the Appellant is mostly independent. In Part C of the AR he rates her as independent in 25 of 28 aspects of daily living activities. The prescribed professional does not indicate that she requires significant help from other persons or assistive devices in order to perform her daily living activities. Therefore the Panel finds that the Appellant has not met the criteria of having an opinion from a prescribed professional that confirms that her impairment significantly and directly restricts her from performing her daily living activities.

The Appellant's doctor does not indicate that the Appellant requires significant help from others to perform her daily living activities and only uses an assistive device to relieve neck pain approximately twice per month. Her Doctor did not note that she required any other assistive devices to assist her in performing her daily living activities and therefore the Panel finds that the Appellant had not satisfied the criteria of help required.

For these reasons the Panel finds that the Reconsideration Decision was reasonably supported by the evidence and confirms the Ministry Decision.