

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated February 2, 2010 denied the Appellant's application for Persons with Disabilities (PWD) designation. 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 Person's with Disabilities Act, (EAPWDA) namely the following criteria:

The minister is not satisfied hat she has a severe mental or physical impairment.

Her 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.

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

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 Panel reviewed the Appeal Record which included administrative information and the following:

Reconsideration Decision dated February 2, 2010

Request for Reconsideration signed on December 14, 2009

Physicians Report (PR) dated August 6, 2009

Assessor Report (AR) dated August 7, 2009

Supplemental Medical Opinion (SMO) signed but not dated

Telephone log dated November 23, 2009 from the prescribed professional confirming the contents of the assessor report

At the hearing, the Advocate stated the appellant is in her early twenties, a single mother of 2 children, foster mother to 3 children and is on regular assistance. She disputes the Ministry decision that the appellant does not meet 3 of the 5 criteria for Persons with Disabilities (PWD). She states that the appellant's physician who has been her physician for 22 years stated in the SMO that in his opinion, she has a severe physical/mental impairment that directly and significantly restricts her ability to perform daily living activities (DLA) and that as a result of these restrictions she requires help to perform the DLA. She reviewed the PR, AR and SMO with the panel.

In the PR the appellant is diagnosed with anxiety and sleep apnea. She has fatigue and is sleepy during the day, is not getting rest from sleep, feels exhausted all the day, anxiety comes and goes, she feels she is getting a heart attack and feels overwhelmed easily. The physician states that she requires a continuous positive airway pressure (CPAP) machine. He indicates there are significant deficits with cognitive and emotional function in the area of emotional disturbances (depression, anxiety) and social functioning is restricted periodically when anxiety overwhelms her, she avoid social functions. The SMO was completed by the same physician. He states in his professional opinion, the appellant has a severe physical/mental impairment and lists obesity, decreased level of fitness, depression, and fatigue. He states the impairment restricts her ability to perform DLA, to make decision about personal care (doesn't change clothes as often as she should), prepare own meals (finds it difficult), shop for personal needs (takes a lot of effort and longer than normal), perform house work to maintain acceptable sanitary conditions (doesn't have energy, gets pains trying to do it). He states the DLA listed are restricted continuously, take 2 to 3 times longer to perform and she requires help with cooking and housework 2 to 3 times a week.

The AR completed by a prescribed professional indicates in cognitive and emotional functioning, there is a major impact on bodily function (sleep disturbance), moderate impact on consciousness and emotion, a minimal or no impact on impulse control and other neuropsychological problems, on insight, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, and other emotional or mental problems. She states the help the appellant requires is provided by family and friends and she requires but does not have a CPAP machine.

The appellant states she feels her health is getting worse. She is gaining weight, feeling more tired and less able to do activities with her children, She states the sleep apnea diagnosis was confirmed by a specialist clinic who reported that she had many more sleep disturbances per night than the average and recommended that she use a CPAP machine. She states the CPAP machine works while she is asleep and without the disturbances, she will get more rest and be less fatigued and

more able to look after her children. She requested a CPAP machine from the Ministry and the request was denied. She states she was told by the Ministry that a CPAP machine was only approved for persons with PWD designation and she then made a PWD application.. She states that she receives 20 hours of child care per week and when she is having a bad day, she calls her mother for help.

The Ministry's submits that the appellant's application for PWD designation does not meet the legislative criteria; specifically she does not have a severe physical/mental 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 submits that the appellant's evidence of a severe physical impairment was not supported by the appellant's physician or by the prescribed professional. The appellant's physician indicated in Part D of the PR that the appellant could walk unaided for 4+ blocks, climb 5 or more stairs unaided, lift 7 to 16 kg, and has no limitation in remaining seated. The prescribed professional indicated in question 3 of the AR the appellant is independent for walking indoors and outdoors, standing, lifting and carrying and holding. The physician indicated in Section E of the PR that the appellant has no restrictions except social functioning in all of the activities listed. The prescribed professional indicated in Section C of the AR that the appellant is independent in all 28 of the categories listed and indicated she needs help from family and friends but does not provide any details regarding the amount of help required.

At the hearing the ministry restated the reasons the reconsideration decision was made.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue before the panel is the reasonableness of the Ministry's Reconsideration decision dated February 2, 2010 to deny PWD status to the Appellant. The legislation states as follows:

Section 2, Employment and Assistance for Persons with Disabilities Act.**(A) Persons with disabilities**

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

(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

(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.

ATTACH EXTRA PAGES IF NECESSARY

Section 2, Employment and Assistance for Persons with Disabilities Regulation

(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 f

(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.

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The panel carefully considered the three reports presented (PR,AR,SMO) and is of the opinion that more weight should be placed on the PR and AR. These reports contain more detail and comment than The SMO.

The Panel finds that the information does not establish that the appellant has a severe physical impairment. The Appellant's physician indicated in Part D of the PR that the Appellant could walk unaided for 4+ blocks, climb 5 or more stairs unaided, lift 7 to 16 kg and has no limitation in remaining seated. The prescribed professional indicated in question 3 of the AR the appellant is independent for walking indoors and outdoors, standing, lifting and carrying and holding.

The Panel finds that although the appellant does have significant deficits in a limited number of cognitive and emotional functions, the evidence does not establish a severe mental impairment. In the PR the Appellant's physician indicated in section 6 there was a significant deficit with cognitive and emotional function in emotional disturbances (anxiety, depression) which is 1 of the 12 functions listed. In the SMO the physician answers "yes" to the question does the appellant have a severe physical/mental impairment with the comment obesity, decreased level of fitness, depression and fatigue, but does not give any indication what degree of impact these have. In the AR the prescribed professional indicates in cognitive and emotional functioning there is a major impact on bodily function (sleep disturbance), moderate impact on consciousness and emotion, a minimal impact on impulse control and other neuropsychological problems and no impact on insight, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, and other emotional or mental problems. She states the appellant has good social functioning with both her immediate and extended social networks.

The panel finds that the appellant's physician and prescribed professional do not confirm that her impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods. In section E of the PR, the physician indicates the appellant has no restrictions in any of the activities listed. In section C of the AR the prescribed professional indicates that the appellant is independent in all 28 of the categories listed.

The Panel finds that the appellant does not require significant help or supervision of another person to perform DLA restricted by her Impairment. The appellant's physician indicated in the SMO that she requires help 2 to 3 times a week for cooking and housework and the prescribed professional indicates in the AR that the appellant requires help from family and friends but gives no details about the amount needed. The appellant stated that on bad days she calls her mother for help but does not indicate how often these bad days occur.

For these reasons the Panel finds the Ministry's decision was reasonably supported by the evidence and the decision is confirmed.

ATTACH EXTRA PAGES IF NECESSARY