

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated February 22, 2010, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLA, it could not be determined that she requires the significant help or supervision of another person, the use of an assistance device, or the services of an assistance animal to perform DLA.

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

The evidence before the ministry at reconsideration consisted of an outpatient clinic report dated August 16, 1999, a letter from a prescribed professional to the appellant's physician dated May 20, 2008, a letter from a prescribed professional to the appellant's physician dated November 24, 2008, and an e-mail dated October 19, 2009, a Self-report, a Physician's Report dated August 4, 2009, and an Assessor's Report dated August 4, 2009, and appellant's request for Reconsideration dated February 8, 2010.

The Physician's Report diagnoses the appellant with possible sarcoidosis, sleep apnea, marked severity and symptomatology of fibromyalgia, possible autoimmune disorder - under continuing investigation, and hospitalization in 1995 for depression. In the Health History section of the report the physician indicated that the appellant's fibromyalgia condition causes chronic fatigue, chronic pain, depression, poor social functioning, poor sleep and obesity, and that the duration of the medication that is prescribed to the appellant is chronic. The physician's report also indicates that the appellant has skill limitations as walking 2 - 4+ blocks, lifting 5-15 lbs, and sitting less than 1 hour, and the appellant is able to climb 5+ stairs unaided, able to walk, climb stairs and stand although the appellant uses a cane/walker depending on tasks. The physician also indicates that the appellant requires some assistance to lift/carry/hold depending on day and task.

In terms of cognitive and emotional function, the physician reports a number of significant deficits in cognitive and emotional functions; the comments appear to read most problems become evident with stress/fatigue, understanding, speech, impulse control. In assessing the daily functioning, the appellant's physician notes mainly minimal impacts with three moderate impacts to bodily functions, emotion and executive.

In the Assessor's Report, as assessor, the physician indicates that the appellant can independently manage the majority of daily living activities; he indicated 25 out of 28, basic housekeeping varies between independence and periodic help, periodic help is required to carry home purchases, several tasks take longer to perform, and social functioning does not indicate the need for support / supervision except to say that the appellant's mother visits occasionally to help. The physician also explains, poor functioning due to personality issues 2nd to chronic pain/fatigue. Regarding assistance needed through the use of Assistive Devices, the physician indicates that the appellant uses a cane, walker, a breathing device, and a tool to reach ground, or above shoulders sometimes. The physician also indicated that the appellant requires grab bars in the bathroom/ hand rails on side. The physician indicated that the appellant does not need assistance of an assistive animal. He also noted that the appellant seems completely unable to engage with the demands of work/society due to her chronic illness.

The ministry concludes that the information from the physician does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods.

In the appellant's application for PWD status Self-report, the appellant states that she has chronic autoimmune disease that has been running rampant until recently without effective treatment (over 20 years), a specialist has diagnosed her with sarcoidosis which is worse than Lupus, being untreated for a long time with constant inflammation of all tissues and organs leaves her in great pain and much limited functioning of all bodily systems. She stated that she is fearful of not being believed even with all the evidence and years of telling the same story, she asks the ministry to please process the application for PWD status so that she can have access to more benefits. The appellant concludes her statement saying that she does socialize at church weekly, then sleeps Sunday afternoon and Monday.

At the hearing the appellant stated that she was receiving a CPP disability pension and applied for PWD status as the pension is insufficient for her needs. She needs more funding for travelling to visit a specialist in another city and for additional medication that is not covered by her medical plan. She also stated that she owns her own home and had a suite constructed with the purpose of renting it out. The appellant also presented to the panel computer printouts to explain the various medical terminologies that the physician uses in the Physician and Assessor Reports. She went to great depths to explain that she had all the symptoms that were in the computer reports on sarcoidosis, chronic fatigue syndrome and fibromyalgia. The appellant stated that she does not get the support from her physician. The appellant stated that she sleeps 10 to 14 hours a day 4 days out of 7 and often takes 2 hour naps, sleeps 5 or 6 hours 2 days out of

seven and takes naps on those days. She went on to state that she takes a narcotic medication 4 tablets a day with 1 tablet at night, takes medication to make her sleep, but sets the alarm clock so that she can take other medication that she is required to take every 6 hours, she said she needs to wake up to feed her animals. The appellant also stated that she can drive her car to do shopping and attend bible classes once a week and church on Sundays. She stated that her Mother, who does not live in the area, visits her every two months in the summer months and once in the winter at Christmas time. The appellant admitted upon questioning, that both she and her mother had added comments to the Physician and Assessor reports, because she said that her physician had not explained her condition accurately. Upon further questioning the appellant admitted that she self-diagnosed that she needed a walker and purchased one. She admitted to having a handicapped parking permit which she obtained by her physician completing the application form. The appellant also submitted a copy of a physician referral dated September 8, 2008, in which the physician stated that the appellant requires home assessment for assistance with home responsibilities. The appellant also submitted 8 undated photographs of the condition of her home.

The panel admitted this oral and written evidence pursuant to section 22(4) of the EAA in support of the evidence which was before the ministry at the time of reconsideration.

At the hearing, the ministry stood by the reconsideration decision and stated that the evidence of a prescribed professional does not indicate a severe physical or mental impairment which creates a significant restriction with Daily Living Activities (DLA) or the need for significant assistance from another person. The ministry reviewed the legislation and medical evidence provided by the physician and the assessor which was before the ministry at reconsideration and stood by the reconsideration decision.

The panel finds that: (a) the appellant suffers from possible sarcoidosis, sleep apnea, marked severity and symptomatology of fibromyalgia, possible autoimmune disorder, which is under continuing investigation; (b) the appellant was hospitalized in 1995 for depression; (c) the appellant has skill limitations as walking 2-4 blocks, lifting 5-15 lbs, and sitting less than an hour, and that the appellant is able to climb 5+ stairs unaided, able to walk, climb stairs and stand although the appellant uses a cane/walker depending on tasks; (d) the physician reports a number of significant deficits in cognitive and emotional functions, most problems become evident with stress/fatigue, understanding, speech, impulse control; (e) the appellant can independently manage the majority of daily living activities, basic housekeeping varies between independence and periodic help. Periodic help is required to carry home purchases, several tasks take longer to perform, social functioning does not indicate the need for support/ supervision except to say that the appellant's mother visits occasionally to help; (f) the additional support evidence presented at the hearing does not confirm that the appellant has a severe physical or mental impairment.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment, and that her daily living activities (DLA) are not in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and as a result of those restrictions, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2) (a) the impairment must be likely, in the opinion of the medical practitioner, to continue for at least 2 years. Section 2(2) (b) (i) requires that the impairment, in the opinion of the prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2) (b) (ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1) (a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment, means the following activities: (i) preparing own meals (ii) managing personal finances (iii) shopping 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. Section 2(1) (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's position is that the evidence does not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts DLA or necessitates help with DLA.

The appellant's position is that she believes the ministry's reconsideration decision is wrong because she does have a progressive incurable autoimmune disease as stated in her physician's letter, and that she can minimally function 1-2 hours on good day and good days follow 2-3 days of complete (forced) rest, however 80% of her life is huddled in pain under 4-6 ice packs. In her original application for PWD status the appellant stated that she has been diagnosed by a specialist with sarcoidosis, and has been untreated for a long time with constant inflammation of all tissues and organs which leaves her in great pain and limited functioning of all bodily systems. The appellant argues that she is eligible for PWD status due to her disabilities and resulting restrictions and that her impairment does significantly restrict her activities of daily living.

Regarding the existence of a severe physical impairment, the panel finds that the evidence confirms a degree of functioning skill limitations as walking 2-4 blocks, lifting 5-15 lbs, and sitting less than an hour, but the physician has indicated that the appellant is able to climb 5+ stairs unaided, able to walk, climb stairs and stand although the appellant uses a cane/walker depending on tasks. The appellant's physician states that she can independently manage the majority of daily living activities; he indicated 25 out of 28, basic housekeeping varies between independence and periodic help. Periodic help is required to carry home purchases, several tasks take longer to perform, however, and the frequency and duration of periodic assistance is not addressed. The panel acknowledges that the appellant has some physical limitations, but the evidence does not establish a severe physical impairment.

The panel also finds that the appellant's physician has not provided enough evidence to confirm a severe physical impairment. Therefore the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

Respecting the existence of a severe mental impairment, the physician reports a number of significant deficits in cognitive and emotional functions; he indicates that most problems become evident with stress/fatigue, understanding, speech, impulse control. He further reports all DLA of a cognitive nature are performed independently, but states that the appellant

has poor social functioning due to personality issues and chronic pain and fatigue, but does not indicate the need for support/ supervision except to say that the appellant's mother visits occasionally to help. In assessing the impact on daily functioning, the physician notes mainly minimal impacts with three moderate impacts to bodily functions, emotion and executive.

The panel finds that the physician has not provided enough evidence to confirm a severe mental impairment. Therefore the ministry reasonably concluded that the evidence does not establish a severe mental impairment.

As neither a severe physical or mental impairment has been established, the panel finds that the ministry reasonably determined that the legislative requirement of section 2(2) or the EAPWDA has not been met.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the assessor's report in which the appellant's physician establishes that the appellant is independent in 25 out of 28 of DLA and explains that poor social functioning due to personality issues 2nd to chronic pain/fatigue, but he does not indicate that the appellant needs support /supervision except to say that the appellant's mother visits occasionally to help. The panel considered the appellant's own written evidence that she does socialize at church on a weekly basis and that she does not indicate in her written submission that she needs assistance with her DLA

The panel finds that while the evidence establishes that the appellant's impairment impacts her ability to perform some DLA and that she needs periodic assistance of unspecified frequency and duration to complete some DLA, the appellant's physician's evidence regarding independence of the appellant to complete DLA does not establish that the appellant's impairment has directly and significantly restricted her ability to perform DLA. Therefore the panel finds that the ministry reasonably concluded that the evidence does not establish a direct and significant restriction, in the opinion of the appellant's physician of the appellant's ability to perform DLA as required by section 2(2)(b)(i) of the EAPWDA.

In determining whether the ministry reasonably concluded that the appellant does not require help with DLA, while the panel finds that the appellant does not state that she needs assistance to complete DLA, as the evidence of the physician establishes that the appellant is independent with the majority of DLA, the appellant's need for help, as defined in the legislation has not been established.

The panel took into consideration the additional material supplied by the appellant, the Physician Referral Order noting that this order is for an assessment only, and not for requesting assistance for the appellant, the appellant's own testimony at the hearing, where she admitted to being independently driving a vehicle, going to and from stores and caring for herself and her animals. Although she receives periodic assistance from her Mother, these visits are not on a regular basis, therefore the panel cannot determine how much assistance the appellant requires, the physician does not prescribe an assistive device, but the appellant self-diagnosed the need for a walker and a cane.

The panel took into consideration the photographs supplied by the appellant of the untidy condition of her home, but the panel is constrained in the legislation, that is must be in the opinion of a prescribed professional that the appellant's impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods and is not whether the house is in sanitary conditions.

After considering all the evidence. the panel finds that the ministry reasonably determined the requirement for help to perform the DLA under section 2(2)(b)(i) of the EAPWDA has not been met.

The panel therefore finds the Ministry's decision in this case was reasonable based on the evidence and was a reasonable application of the legislation in the circumstances of this appellant.

The panel is unanimous in confirming the reconsideration decision of the Ministry under section 24 (2) (a) of the Employment and Assistance Act (EAA).