

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated December 9, 2009, which denied the appellant's request for Persons with Disabilities designation.

The Ministry may designate a person as a Person with Disabilities (PWD) if all of the 5 criteria from the legislation have been met. Upon review of the information submitted, the Ministry found that::

1. The appellant does meet the age requirement.
2. The medical practitioner confirms that the impairment is likely to continue for at least 2 years.
3. The Minister is not satisfied that the appellant has a severe physical or mental impairment.
4. The Minister is not satisfied that, in the opinion of a prescribed professional, the appellant's ability to perform daily living activities are directly and significantly restricted, either continuously or periodically for extended periods by the impairment.
5. The Minister is not satisfied that the prescribed professional has confirmed that the appellant requires the significant help or supervision of another person to perform daily living activities, or that the appellant requires an assistance device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment & Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment & 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 appellant has requested Persons with Disabilities designation, which has been denied by the Ministry stating that based on the information provided, the appellant does not have a severe mental or physical impairment that does not directly and significantly restrict the ability to perform daily living activities and does not require significant help or supervision of another person to perform the daily living activities.

The evidence before the Ministry included a letter from the appellant (not dated), a physician's report, an assessor's report (completed by the same physician), and a submission from the appellant's advocate which was received after the reconsideration decision was made, and accepted by the Ministry to be included in the Appeal Record under Section 22(4) of the EAA.

The physician's and assessor's reports were completed by a prescribed professional (medical practitioner) known by the appellant for several years. In the physician's report, the prescribed professional has diagnosed the appellant with degenerative disc disease, anxiety and depression, chronic pelvic pain and chronic obesity. The prescribed professional states the appellant is able to walk unaided on a flat surface for 1 to 2 blocks, unknown how many stairs the appellant can climb unaided, limited to lifting 5 to 15 pounds, and can remain seated for less than one hour. Mobility is impaired and is unable to hold a job due to illness requiring frequent time off. Medication taken by the appellant can cause drowsiness which interferes with the ability to perform daily living activities, with an anticipated indefinite duration. The prescribed professional describes the appellant as suffering from significant cognitive and emotional deficits, caused by depression, anxiety and impulse control, further described as impulsive eating. The prescribed professional notes that the impairment directly restricts the appellant's ability to perform daily living activities, requiring periodic assistance in five aspects (personal self care, meal preparation, daily shopping, mobility outside the home and use of transportation), and requiring continuous assistance with basic housework, with additional comments regarding the degree of restriction as 'considerable'. The appellant has been referred to a gastric surgeon for consideration of surgery, as the back impairment will not improve without major weight loss.

The assessor's report completed by the same prescribed professional (medical practitioner) describes the appellant's ability to communicate as satisfactory. The appellant is independent with walking indoors, requires continuous assistance with lifting, carrying and holding, uses an assistive device (cane) when walking outdoors, and takes significantly longer than typical with walking indoors and out, climbing stairs and standing. All these restrictions are related to back pain, which when the back pain increases, even needs help to dress. Cognitive and emotional functioning are moderately impacted in 9 aspects (bodily functions, impulse control, insight and judgement, attention and concentration, executive, memory, motivation, motor activity, with all affected by anxiety and depression), with emotion as a major impact on daily functioning. There is no impact with language, psychotic symptoms, or other neuropsychological problems. Consciousness is minimally impacted. The prescribed professional has indicated the appellant is independent with regulating diet, reading prices and labels, making appropriate choices when shopping, paying for purchases, meal planning,

safe storage of food, using transit schedules and arranging transportation, and social functioning, although there is some difficulty with interacting with others as the appellant marginally functions in social relationships. Periodic assistance is required with 15 daily living activities, restricting the appellant's ability with dressing, grooming, bathing, toileting, feeding self, transferring in and out of bed and on and off of chairs, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking, getting in and out of a vehicle and using public transit.

The appellant's advocate provided and read a submission at the hearing, encapsulating the information within the appeal record, which was accepted by the panel.

The Ministry stated that while the impairment has some significant impact for the appellant, the severity is not to the highest degree. The Ministry looks at a range for this designation, with more boxes checked by the physician or assessor as 'major' in severity, and most boxes have been checked in the 'moderate' category. With only one 'major' box checked, the Ministry does not feel the impairment meets the severity level to grant PWD designation. The Ministry further stated the appellant only 'occasionally' uses a cane, and did not feel the information provided was compelling enough to grant the designation. The Ministry described the legislation as requiring periodic assistance for extended periods or continuously. The Ministry's interpretation of 'extended periods' is 'weeks at a time'.

The advocate responded to the Ministry's statement stating that 9 moderate and 1 major impact on daily functioning speaks to the severity of the appellant's condition.

The panel finds that: (a) the appellant suffers from degenerative disc disease, anxiety and depression, chronic pelvic pain and chronic obesity; (b) the prescribed professional noted mobility is impaired and medication can cause drowsiness which interferes with the ability to perform daily living activities, with an anticipated indefinite duration; (c) the appellant suffers from significant cognitive and emotional deficits; (d) the prescribed professional has indicated the appellant's ability to perform 15 daily living activities are restricted requiring periodic assistance from another person; (e) the prescribed professional notes the appellant requires a cane occasionally for support walking.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the 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, 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 person 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 a prescribed professional, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a 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 as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

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

The appellant's position is that the EAPWDA should be interpreted in a large and liberal manner and that the evidence establishes that the appellant has a severe impairment that does significantly and continuously restrict her ability to perform DLA's and that she uses the help of another person to complete DLA's.

Regarding the existence of a severe physical impairment, the panel finds that the evidence confirms physical impairments of degenerative disc disease, chronic pelvic pain and chronic obesity causing considerable restriction and impaired mobility. Indefinite use of narcotics interferes with her ability to perform DLA's, requiring the continuous assistance of another person with lifting, carrying and holding. Walking indoors and out, climbing stairs and standing all take significantly longer than typical because of the back pain, requiring help to dress when the back pain is severe. The panel finds that the prescribed

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professional has noted periodic assistance required with DLA's which are restricted by the impairment; dressing, grooming bathing, toileting, feeding self, transferring in and out of bed and on and off of chairs, laundry, going to and from stores, carrying purchases home, food preparation, cooking, getting in and out of a vehicle and using public transit. Assistance is provided by family and friends and occasionally using a cane. Further, it is acknowledged that the appellant cannot lift, sit or hold a job due to frequent time off caused by the impairment. The prescribed professional has noted that the impairment directly restricts the appellant's ability to perform DLA's, and periodically requires assistance with personal self care, meal preparation, daily shopping, mobility outside the home and use of transportation. Continuous assistance is required with basic housework. Additional comments provided by the prescribed professional indicate 'periodic' means needs help to dress occasionally; needs help with carrying groceries, and that the degree of restriction is 'considerable'. The panel finds that the prescribed professional has provided sufficient evidence that establishes the appellant has a severe impairment that does significantly and continuously restrict her ability to perform DLA's, and that she uses the help of another person to complete DLA's. Therefore, the panel finds that the ministry has not reasonably concluded that the evidence does not establish a severe physical impairment.

Respecting the existence of a severe mental impairment, the prescribed professional has diagnosed mood disorder, anxiety, and depression, with significant deficits with cognitive and emotional function described as emotional disturbance and impulse control (impulsive eating). The impairment causes major impact on emotion, with moderate impacts on sleep disturbance, impulse control, insight and judgement, attention/concentration, executive problem solving, memory, motivation, motor activity, with all being affected by anxiety and depression. While the appellant is independent with social decisions, maintaining relationships, interacting with others, able to deal with unexpected demands and secure assistance from others, the prescribed professional describes marginal functioning with immediate and extended social networks, seldom out of the home and does not interact with others. The panel finds that the prescribed professional has provided enough evidence to confirm a severe mental impairment. Therefore the ministry did not reasonably conclude that the evidence does not establish a severe mental impairment.

As both a severe physical and mental impairment have been established, the legislative requirement of section 2(2) of the EAPWDA has been met.

Regarding the appellant's ability to manage DLA's, the panel has relied on the evidence of the prescribed professional's Physician and Assessor's Reports, which establishes the impairment directly restricts the ability to perform DLA's continuously for basic housework, periodically for personal self care, meal preparation, daily shopping, mobility outside the home and use of transportation. Additionally, in the Assessor's Report, the prescribed professional notes continuous assistance required with lifting, carrying and holding, using an assistive device for walking outdoors, and taking significantly longer than typical with walking indoors and out, climbing stairs and standing. With cognitive and emotional functioning, 9 out of 14 aspects are moderately impacted, with one major impact. Out of 28 DLA's the appellant is independent in 7, requiring periodic assistance with 15 of the 28. The panel finds that the evidence establishes that the appellant's impairments impact her ability to perform most DLA's, and that she has continuous and periodic assistance to complete these DLA's, and that the prescribed professional's evidence establishes that the appellant's impairment has directly and significantly restricted the appellant's ability to perform DLA's. Therefore

the panel finds that the ministry did not reasonably conclude that the evidence does not establish a direct and significant restriction, in the opinion of a prescribed professional, of the appellant's ability to perform DLA's as required by section 2(2)(b)(i) of the EAPWDA.

In determining whether the ministry reasonably concluded that the appellant does not require significant help or supervision with DLA's, the panel finds that the evidence does support the fact that the appellant does receive the assistance of family and friends to complete DLA's, and confirms the use of a cane for walking outdoors. The evidence of the prescribed professional establishes that the appellant requires assistance with the majority of DLA's, and the appellant's need for help has been established, as well as the need for an assistive device. The panel finds that the evidence does establish a direct and significant restriction to DLA's, and the panel finds that the ministry did not reasonably conclude that the requirement for significant help or supervision to perform the DLA's under section 2(2)(b)(ii) of the EAPWDA has not been met.

The panel has determined that the Ministry's decision to deny Persons with Disabilities designation is not reasonably supported by the evidence in the circumstances of the appellant, and the panel rescinds the Ministry's decision.