

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated March 18, 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 the appellant's 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 a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help 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

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 evidence before the ministry at the time of reconsideration was comprised of a PWD application (Self-report (SR), Physician Report (PR), and Assessor Report (AR)) and the Request for Reconsideration.

In the SR, the appellant reports that walking is very difficult and painful and that housework in general is basically impossible and attempts to vacuum result in being bedridden for 3-4 days; doing the simplest things in life causes pain.

In the PR, completed by the appellant's general practitioner of 1 ½ years, the appellant is diagnosed with cervical degenerative disc and joint disease, osteoarthritis at multiple sites, hypertension, dyslipidemia, asthma, and peptic ulcer. The physician writes that the appellant's inability to sustain work is directly due to constant back pain and that despite pain management (heavily medicated on narcotics), the appellant "feels that she is unable to work out or inside the house". The physician indicates that the narcotics may alter the appellant's level of consciousness, cause impaired decision making, and affect concentration. Regarding Functional Skills, the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps, lift under 5 lbs, and remain seated for 1 to 2 hours; no difficulties with communication are indicated and a significant deficit with 3 of 11 specified aspects of cognitive and emotional function is indicated (emotional disturbance, motivation, and motor activity). The physician reports that she has seen the appellant many times for pain management and that the appellant has attended the ER due to pain; the appellant is unable to enjoy life, work, play sports or lose weight due to the pain.

In the AR, completed by the same physician, the appellant's Ability to Communicate is reported as good. The appellant is independent with 4 aspects of Mobility and Physical Ability (walking indoors, walking outdoors, climbing stairs, and standing) while the remaining 2 aspects (lifting and carrying/holding) require continuous assistance from another person – difficulty accessing food from cupboards above the head is noted. No major impact is noted for any aspect of Cognitive and Emotional Functioning with a moderate impact noted for 2 of 13 listed aspects (emotion and motivation) with narrative that the appellant is depressed and frustrated about her situation which has been going on for many years. Regarding DLA, the appellant is reported to be independent with all aspects of personal care, meals, paying rent and bills, and medications as well as with 3 aspects of shopping and 3 aspects of social functioning. Periodic assistance is indicated for 1 aspect of basic housekeeping, 2 aspects of shopping, 1 aspect of transportation (the other 2 are not applicable), and with 1 aspect of social functioning; continuous assistance is indicated for 1 aspect of basic housekeeping. The assessor writes that the appellant needs help with basic housekeeping and grocery shopping and that she gets easily upset and frustrated with increasing demands for which she requires counseling (social functioning). Marginal functioning is reported for both immediate and extended social networks. Assistance is provided by family and financial help is required but not available.

In the Request for Reconsideration the appellant writes that although she does not have a severe mental impairment she gets deeply depressed knowing she is unable to perform a lot of DLA. The appellant writes that she does have a severe physical impairment as she is unable to stand for any length of time to do dishes, prepare meals, dust etc. without experiencing severe pain; she cannot vacuum and lives with constant pain. Her life has completely changed due to her physical impairment and, as a result of lack of activity, she has high blood pressure and cholesterol problems.

At the hearing, the appellant stated that she is unable to stand or sit for any length of time, has difficulty doing

dishes and preparing meals, and that she cannot do any vacuuming or house cleaning. She reports that she will always require heavy pain medication which affects her normal thinking. Referencing the PWD application, the appellant stated that her physician had not accurately reflected her severe physical impairment as the appellant is not able to walk 1 to 2 blocks, as she can barely stand, and is unable to perform many aspects of house keeping and meal preparation. The appellant stated that she is unable to work and is in need of financial assistance in order that she can obtain medical, dental and optical care.

At the hearing, the ministry reviewed the legislative criteria and stated that employability is not a criterion when assessing eligibility for PWD designation.

The panel makes the following findings of fact: (a) the appellant suffers from cervical degenerative disc and joint disease, osteoarthritis at multiple sites, hypertension, dyslipidemia, asthma, and peptic ulcer; (b) the appellant suffers from chronic pain which results in limitations to functioning; (c) the prescribed professional reports that the appellant is able to perform 21 of 26 aspects of DLA independently, with continuous assistance indicated for 2 aspects and periodic assistance indicated for 3 aspects.

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 DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that the appellant does not require help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

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 medical practitioner, 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 appellant's position is that she is eligible for designation as a PWD because she has a severe physical impairment that prevents her from being able to stand or sit for any length of time or perform DLA.

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

Regarding the existence of a severe mental impairment, the panel finds that although the physician writes that the appellant is depressed and frustrated due to constant pain and has some deficits with cognitive and emotional function, as there is no diagnosis of a mental impairment or brain injury, and as no major impact is noted on daily functioning, the ministry reasonably determined that a severe mental impairment has not been established under section 2(2) of the EAPWDA.

Regarding the existence of a severe physical impairment, the evidence in the PR is that excepting a severe limitation with lifting (less than 5 lbs), the appellant has limitations respecting functional skills which may reasonably be viewed as moderate, as the appellant can walk 1-2 blocks unaided, climb 2 to 5 steps unaided, and sit for 1 to 2 hours. This evidence is consistent with the evidence in the AR that the appellant is independent with all aspects of mobility and physical ability except lifting and carrying/holding. Therefore, the panel finds that the ministry reasonably determined that a severe physical impairment has not been established under section 2(2) of the EAPWDA.

Regarding the degree to which the appellant's DLA are restricted, the panel finds that the evidence provided by a prescribed professional is that the appellant independently performs 21 of 26 applicable aspects of DLA without any assistance with continuous assistance indicated for 2 aspects, basic housekeeping and carrying purchases home (the panel accepts the evidence respecting the need for continuous assistance with lifting/carrying/holding identified in Section B3 - mobility and physical ability of the AR as establishing the need for continuous assistance under Section C – DLA of the AR as it is consistent with the appellant being limited to lifting under 5 lbs). Periodic assistance is indicated for the remaining 3 aspects of DLA (laundry, going to and from stores, and getting in and out of a vehicle) though the prescribed professional has provided no information respecting either the duration or frequency of the periodic assistance. Therefore, as the evidence of the prescribed professional is that the appellant is independently able to perform the majority (21 of 26) of aspects of DLA, with continuous assistance only indicated for 2 aspects and periodic assistance, which cannot be established as being for extended periods, indicated for 3 aspects, the panel finds that the ministry reasonably determined that the appellant is not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods in her ability to perform DLA as required under section 2(2)(b)(i) of the EAPWDA.

The panel also finds that, as a direct and significant restriction with DLA has not been established, as the appellant is able to independently manage most aspects of DLA, the ministry reasonably determined that the evidence does not establish that, in the opinion of a prescribed professional, the significant help or supervision of another person, use of an assistive device or assistance animal is required to perform DLA as required under section 2(2)(b)(ii) of the EAPWDA. In reaching this decision, the panel notes that the need for financial assistance does not fall within the meaning of help under section 2 of the EAPWDA.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.