

[REDACTED]

**PART C – DECISION UNDER APPEAL**

This is an appeal of the Ministry's Reconsideration Decision issued on January 5th, 2010 pursuant to which the Ministry denied the Appellant's application to be designated as a "person with disabilities" ("PWD") under section 2(2) of the Employment and Assistance for Persons With Disabilities Act. The Ministry was satisfied that the Appellant met the age requirement (18 years or more) and had a mental or physical impairment that was likely to continue for at least 2 years. However, the Ministry was not satisfied that: i) the Appellant's mental or physical impairment could be characterized as "severe", or that a prescribed professional had given an opinion that ii) her mental or physical impairment directly and significantly restricted her ability to perform daily living activities ("DLA") either continuously or periodically for extended periods, or, iii) as a result of her restrictions she required help to perform her DLA.

**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

[REDACTED]

## **PART E – SUMMARY OF FACTS**

The Appellant is a woman who, according to the medical evidence set out in the Appeal Record, suffers from a variety of ailments including diabetes, a neurological disorder secondary to diabetes, arthritis, degenerative disc disease, high blood pressure, ischemic heart disease and depression. The Appellant takes approximately 16 separate prescribed medications on a daily basis and regularly uses a cane. The bathroom in her home has been fitted with support bars. She may require a motorized scooter at some, as yet unspecified, future point.

The Appeal Record includes a Physician Report and an Assessor Report both of which were prepared by her general physician who indicates he has been treating the Appellant for 5 years and saw her on 11 or more occasions during the past 12 months. The two reports are dated August 6th, 2009. In the Physician's Report, her treating doctor reports that she cannot walk unaided (as noted above, she uses a cane). She can climb 2 to 5 steps, can only lift objects under 5 pounds and can remain seated for 1 to 2 hours. As for cognitive and emotional functioning, she can communicate effectively but does suffer in some areas – she is confused at times, has problems with planning and organization, suffers memory problems and is depressed. Her doctor reports she is "severely disabled by her medical problems".

The Assessor Report indicates that she has good communication abilities although she has poor hearing. The Appellant requires periodic assistance when walking indoors and continuous assistance when walking outdoors, climbing stairs, standing, lifting and carrying and holding objects. These problems are attributed to "shortness of breath" and "pain due to arthritis". In terms of cognitive and emotional functioning, her doctor says that her condition has a minimal impact on her consciousness, impulse control, attention and concentration, memory and motivation. Her condition imposes a moderate impact regarding her depression, motor activity and her general mental state. No major impacts are reported and her condition has no impact on her insight and judgment, her ability to plan and solve problems, or her speech. She has no language problems, delusions or learning disabilities. The impact of her condition on her daily living activities is mixed. She has no trouble dressing and grooming and attending to her personal hygiene but requires periodic assistance to get in and out of a bed or a chair. She needs periodic assistance with laundry and basic housekeeping. She can shop independently but requires assistance getting to and from the store. She can generally look after her meal planning and cooking except that her arthritis makes it difficult, for example, to chop vegetables. She is fully independent in terms of her personal finances (banking/paying bills) and attends to her own medication requirements. She requires periodic assistance to get in and out of a vehicle or on to public transit. With respect to her social functioning, she is described as functioning well save that she needs some support to maintain social relationships.

The Appeal Record also includes some medical consultation reports. A consulting physician reported that as of December 10th, 2008 the Appellant had normal muscular strength in her legs and arms but slightly restricted cervical range of motion. An earlier report in July 2007 indicated that her wrist problem was not sufficiently serious to require surgery.

The Appellant testified that she takes daily walks of up to 75 minutes but must stop for about a 10-minute break after 15-20 minutes of walking. She also confirmed much of what was contained in the Assessor Report including that she prepares and cooks her own meals but has some trouble with

cutting vegetables, she handles her personal finances without difficulty, attends to her own personal hygiene and medication requirements. She regularly attends church and walks with a friend on a daily basis (albeit with some difficulty as noted above) but still has episodes of depression. She requires assistance with her housekeeping needs.

## **PART F – REASONS FOR PANEL DECISION**

The issue before the panel in this appeal is whether the Ministry's reconsideration decision was reasonably supported by the evidence before it or was a reasonable application of the applicable provisions of the EAPWDA and the EAPWDR. The relevant provisions of the statute and regulation are reproduced below:

### **EAPWDA**

2. (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.

### **EAPWDR**

2. (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.

The Ministry simply relies on its position as set out in the reconsideration decision, namely, that she did not have a severe mental or physical impairment, and, in any event, that her impairments did not significantly restrict her DLAs to the point that she required help with them. The Appellant's advocate submits that her condition is severe, both in respect of its physical and mental components, and says that the Ministry's decision is unreasonable in light of the available medical evidence.

The Appellant meets the 18-year age requirement and the Ministry concedes that the Appellant's current impairments are likely to continue for at least two years. However, the Ministry characterizes the Appellant's physical and mental impairments as being moderate rather than severe.

We are satisfied that the Appellant has both physical and mental impairments. Although her treating physician described the Appellant as being "severely disabled by her medical problems" it is not clear if he was referring to her physical impairments, her mental impairments, or both. Insofar as her physical condition is concerned, she does have limitations in terms of walking, standing, climbing stairs, lifting and getting into vehicles, into and out chairs and her bed. She uses a cane. Her hearing is poor. These limitations are documented in the medical evidence before us, however, we find that these physical impairments – as described in the medical evidence – are more fairly characterized as mild to moderate rather than severe.

In terms of mental impairments, the chief concern appears to be her depression that is reported to be causally connected to her physical ailments. She does not have a brain injury and she functions well in terms of virtually all objective measures of cognitive function – she speaks without difficulty, she can read and write and where there is an impact of her depression on her cognitive and emotional functioning, the impact is described by her doctor as being either "minimal" or "moderate", never "major".

We find that the Ministry reasonably characterized the Appellant's physical and mental impairments as being moderate rather than severe although we also find that her physical impairments appear to be much more substantial than her mental impairments. With respect to her mental impairment, the evidence before us is that the Appellant capably makes decisions about her personal activities, care and finances and is generally quite able to relate to others effectively and thus we are not satisfied that she has a severe mental impairment (see EAPWDR, s. 2(1)(b)).

However, even if we were to conclude that the Appellant's physical impairments were in the "severe" category (and we do not so find), section 2(2)(b) of the EAPWDA states that a prescribed professional (the Appellant's treating doctor in this case) must provide an opinion that the impairment "directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods, and as a result of those restrictions, the person

requires help to perform those activities.”

Section 2(1)(a) of the EAPWDR (see above) sets out a list of various DLAs. The evidence before us is that the Appellant can prepare her own meals, manage her own finances, shop, use public transit, and attend to her hygiene and medication needs. She does require limited assistance to go shopping; she needs some help with housework. However, in each case, the assistance is required on an intermittent and transient basis. The Appellant uses an assistance device, namely, a cane, so that she can better perform some of her DLAs.

On balance, however, we are not satisfied that the Ministry was unreasonable in concluding that the Appellant's physical impairments “directly and significantly” restricted her DLAs either continuously or periodically for extended periods or that she required significant help in order to carry out her DLAs. We find that the Ministry's decision to deny the Appellant PWD status was reasonably supported by the evidence and otherwise represented a reasonable application of the EAPWDA and EAPWDR in the Appellant's circumstances. Accordingly, the Ministry's reconsideration decision dated January 5th, 2010 is confirmed.