

## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated January 4, 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 assistive 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**

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 ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

A late submission from the appellant, subsequent to the reconsideration decision was received by the Employment and Assistance Tribunal Office. The panel admitted the evidence (updated Physician's Report, Assessor's Report unknown date; medical imaging report, 23 pages) under EAA, section 22(4) as the evidence was in support of the issue.

The evidence before the ministry at the time of the reconsideration decision included: (a) Reasons for Request for Reconsideration, 2 pages; (b) photocopy of medication receipts, 1 page; (c) Persons with Disabilities Application, (i) Applicant Information, (ii) Physician's Report (PR) dated September 4, 2009, (iii) Assessor's Report (AR), dated September 4, 2009.

From the appeal record, the ministry provided in the reconsideration decision that the appellant can walk 1-2 blocks unaided, climb 2-5 stairs unaided, can lift between 5-15 lbs, sit less than 1 hour, and with no significant deficits in cognitive or mental functions. The prescribed professional (PP), in the AR dated September 4, 2009, provided that the appellant has continuous restrictions with mobility/physical abilities, bathing, food preparation and cooking due to reaching for pots and for fear of falls. The AR reports that the appellant is independent with all personal care including laundry, basic housekeeping, shopping, meal planning, banking, budgeting, paying bills, filling/re-filling prescriptions, taking medications are directed, and all transportation activities but needs assistance with bathing.

At the hearing, the appellant stated she had a stroke 25 years ago that affected her right side. Additionally, that the first time that the PR and AR had been filled out by her PP, she was not in attendance. During a subsequent appointment, the appellant and the PP together reviewed and filled in the PR and AR. The subsequent PR and AR confirmed the diagnosis of the appellant to be (a) stroke, (b) epilepsy, (c) aneurysm. The functional skills of the appellant were confirmed as walking 1-2 blocks unaided, climb 2-5 steps unaided, lift 5-15 lbs and sit less than 1 hour. Significant deficits with cognitive and emotional functions were indicated in 3 aspects (emotional disturbance, motivation and attention or sustained concentration). Specific notes include: "memory: can't recall information". The subsequent PR provides that the impairments directly restrict the appellant in 8 aspects of DLA (personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances, social functioning) with mobility being the only restricted activity that is continuously restricted. Specific note by the PR states, "requires help with cooking due to decreased physical activity and decreased physical activity due to limitations". The subsequent AR provides that the appellant has good ability to communicate but needs continuous assistance in 6 aspects (walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding). The AR states that the appellant does need continuous assistance in bathing, laundry, basic housekeeping, reading

prices and labels, making appropriate choices, paying for purchases and carrying purchases home. Additionally, the AR provides that the appellant needs continuous assistance in 12/16 aspects of DLA (food preparation, cooking, safe storage of food, banking, budgeting, pay rent and bills, filling/re-filling of prescriptions, taking as directed, safe handling and storage, transportation – getting in and out of a vehicle, using public transit and using a transit schedule and arranging transportation. Specific notes from the PP include: “can’t reach pots and pans due to physical limitations, not doing budgeting, pharmacy delivers and explains how to take medications, no usage of transportation. The PP remarks in the AR that the appellant needs continuous support for making appropriate social decisions, is withdrawn, unable to deal appropriately, able to secure assistance from others. The AR indicates that the appellant has very disrupted social functioning in both immediate and extended social networks. Specific notes from the PP include: “requires assistance due to physical limitations”. The appellant does use a cane and the PP remarks that the appellant has “physical” assistance provided by friends and family. The PP stated that the appellant had her last seizure 3 years ago.

The appellant stated that she does drag her right leg when she walks, and has modified her way of climbing stairs (has to drag her right foot up the stair). The appellant stated that she can walk 1-2 blocks, climb up to 5 stairs, get around a grocery store, and has the most difficulty with outside mobility. She relies on help with transportation – she has a van, and does not use public transportation. She can complete basic housekeeping, make her bed, take a shower, and get around inside her house. The appellant stated that she can communicate but that at times she laughs when she should cry and vice versa. The appellant’s partner does manage the finances and does the cooking.

The panel finds the following of fact: (a) the appellant, who suffered a stroke 25 years ago, can walk 1-2 blocks unaided, climb 2-5 steps unaided, lift 5-15 lbs and sit less than 1 hour; (b) significant deficits with cognitive and emotional functions were indicated in 3 aspects (emotional disturbance, motivation and attention or sustained concentration); (c) the appellant’s impairments directly restrict the appellant in 8 aspects of DLA (personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, mobility outside the home, use of transportation, management of finances, social functioning) with mobility being the activity that is continuously restricted; (d) AR provides that the appellant has good ability to communicate but needs continuous assistance in 6 aspects (walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding). The AR provides that the appellant does need continuous assistance in bathing, laundry, basic housekeeping, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home. Additionally, the AR provides that the appellant needs continuous assistance in 12/16 aspects of DLA (food preparation, cooking, safe storage of food, banking, budgeting, pay rent and bills, filling/re-filling of prescriptions, taking as directed, safe handling and storage, transportation – getting in and out of a vehicle, using public transit and using a transit schedule and arranging transportation); (e) The AR confirms that the appellant has very disrupted social functioning in both immediate and extended social networks. Specific notes from the PP include: “requires assistance due to physical limitations”. The appellant does use a cane and the PP remarks that the appellant has “physical” assistance provided by friends and family.

ATTACH EXTRA PAGES IF NECESSARY

## **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 is ineligible for PWD as she does not have a severe physical or mental impairment and that her DLA daily living activities (DLA) are, in the opinion of a prescribed professional, not 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 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, in the opinion of the prescribed professional, 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 facilities, 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 impairment that in the opinion of a prescribed professional significantly restricts DLA or necessitates help with DLA.

The appellant's position is that the evidence establishes that the appellant does have a severe impairment that does significantly and continuously restrict her ability to perform DLA and that she could use the help of another person to complete DLA.

Regarding the existence of a severe physical impairment, the panel finds that the evidence establishes that the appellant has had a stroke 25 years ago, epilepsy (last seizure 3 years ago), and an aneurysm that is treated with medications. However, the panel finds that the medical practitioner's evidence confirming that the appellant has good physical functioning does not establish that the physical condition is severe. Therefore, the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

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Respecting the existence of a severe mental impairment, the evidence provided by the PP in the PR identifies 3 deficits in cognitive and emotional functioning (emotional disturbance, motivation and attention or sustained concentration). The same PP indicates in the AR that the appellant has moderate impacts on daily functioning in 4/14 aspects (emotion, attention/concentration, executive, memory) with no impacts listed in the remaining 10 aspects. The panel accepted that although the appellant has some cognitive and emotional deficits, the documentary evidence does not confirm the existence of a severe mental impairment. As such, the panel finds that the ministry reasonably determined that there is insufficient evidence to establish the existence of a severe mental impairment and that as neither a severe physical nor a severe mental impairment has been established, the legislative requirement of section 2(2) of the EAPWDA has not been met.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the AR which establishes that the appellant needs continuous assistance in 12/16 aspects of DLA (food preparation, cooking, safe storage of food, banking, budgeting, pay rent and bills, filling/re-filling of prescriptions, taking as directed, safe handling and storage, transportation – getting in and out of a vehicle, using public transit and using a transit schedule and arranging transportation); the medical practitioner's evidence confirmed in the PR and AR regarding the ability of the appellant to complete DLA, acknowledges that the appellant's impairment does restrict the appellant's ability to perform some DLA. However, the panel finds that as the appellant does not have a severe physical or mental impairment that establishes a direct and significant restriction in the opinion of a prescribed professional, the appellant's ability to perform DLA as required by section 2(2)(b)(i) of the EAPWDA, the ministry reasonably concluded that this legislative test had not been met.

In determining whether the ministry reasonably concluded that the appellant does not require help with DLA, the panel finds that the evidence of the medical practitioner establishes that the appellant is assisted by friends and family to complete some DLA. The appellant receives help in bathing, laundry, basic housekeeping, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home. However, the panel finds that as the appellant does not have a severe mental or physical impairment that establishes a direct and significant restriction and that as a result of those restrictions, the person requires help to perform those activities, the panel finds that the ministry reasonably determined that the requirement for help to perform the DLA under section 2(2)(b)(ii) of the EAPWDA has not been met.

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