



PART C – Decision under Appeal

The reconsideration decision dated 22 September 2010 determined that the appellant was not eligible for the Persons with Disabilities designation because while she did meet the age requirement, the appellant is over 18 years of age, and her condition is likely to continue for at least two years, she did not have a severe mental or physical impairment, that her impairment did not directly and significantly restrict her ability to perform her daily living activities and she did not require significant help or supervision of another person to perform daily living activities restricted by her impairment.

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.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

- On 15 March 2009, the appellant submitted a Persons with Disabilities (PWD) application.
- A Physician Report dated 23 October 2009 by the appellant's physician, stating the appellant suffers from degenerative disc disease since 1988 and that she has chronic low back pain that is not getting better. He adds, "she feels she cannot work because of it". The report also states the appellant needs handrails to climb stairs, that she is limited in lifting to 7 kg and that she cannot remain seated for more than one hour – that she needs to switch position. She does not have any significant deficit with cognitive and emotional function. The physician states that the appellant has been his patient for less than a year and he has seen her twice to ten times in the past 12 months.
- An Assessor Report by the appellant's physician dated 8 March 2010 stating the appellant's ability to communicate is generally good except for hearing that is satisfactory as she experiences "constant ringing". In terms of walking indoors and outdoors, she takes significantly longer, for climbing stairs, she needs handrails, for lifting, she needs a cart and she is independent for carrying and holding but she cannot lift anything heavy. In terms of cognitive and emotional functioning, she has moderate impact for emotion (depression) and motivation; minimal impact for bodily functions (sleep disturbance), consciousness (drowsy), impulse control, attention / concentration and executive. There is no impact on other functions. She is independent in all her daily living activities (DLA) but takes significantly longer for transfers (in and out of bed, on / off of chair), laundry, basic housekeeping, going to and from stores, carrying purchases home where she also needs an assistive device (not described), getting in and out of a vehicle and using public transit. As well, there is no impact on the appellant's relationships. The physician notes that she "may need help with housekeeping" and the only assistive device he notes is a bath bar. The physician based his assessment on an office interview with the appellant and with her file/chart information (no specifics) and he states it was his first contact with the appellant and had known her for less than a year.
- A two-page Health Report from a medical institution dated 12 May 2003 to the effect the appellant suffers from degenerative arthropathy at L4-5 and L5-S1 and hemangioma involving nearly the entire T12 vertebral body.
- An undated letter apparently written by the appellant expressing her financial difficulties caused by her condition.
- An Applicant Information form filled by the appellant on 9 March 2010 explaining her physical and mental condition and the fact that she cannot work due to that condition.

The Ministry determined at reconsideration that, while she met the age and duration requirement, the appellant was not eligible for a PWD designation because she does not have a severe mental or physical impairment. The Ministry states that there is no indication how much longer the appellant takes to perform certain activities and handrails and carts are not assistive devices according to the legislation and therefore the appellant does not have a severe physical impairment. There are no significant deficits in terms of cognitive and emotional functioning and while the assessor comments the appellant states those impacts are due to depression, he does not indicate a formal diagnosis of depression and as a result, the Ministry determined the appellant did not establish a severe mental impairment.

In terms of DLA, the Ministry determined that the appellant is independent in all those activities. While she might take longer for a number of activities, the physician did not comment on how much longer than normal it takes the appellant to perform those specific activities. As well, while the assessor comments that the appellant may need help with housekeeping, there is no indication that she actually requires assistance and the report mainly shows she can perform those activities independently. The Ministry determined that the appellant's condition does not establish significant restrictions to her DLA. Finally, the Ministry determined that no significant help is required from other persons for the appellant to perform her DLA.

The Ministry was not in attendance at the hearing and after confirming that the Ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation (EAR).

At the hearing, the appellant reiterated her submission, adding that when she does not sleep well, which happens frequently, she gets very tired and cannot do much work. Her back pain has not improved and there are no painkillers that can remove it. She finds it very difficult to buy the vitamins she needs as she does not get an allowance for that and often she cannot buy them. She also helps an elderly neighbour about once per week but she finds that increasingly difficult. She testified that she did add "13.8 Fibromyalgia" on the physician's form because, even though she was not diagnosed, she knows she has it because she feels the same symptoms as her sister who suffers from it. Referring to the Assessor Report, she stated the doctor did not seem to pay much attention to her responses and was eager to fill the form as quickly as possible. She also noted that while the physician answers "yes" to the question "Is this your first contact with the applicant", she had in fact seen him many times, perhaps 7 or 8 times in the last year or so.

PART F – Reasons for Panel Decision

The issue under appeal in this case is the reasonableness of the Ministry decision that the appellant was not eligible for the Persons with Disabilities designation.

The legislation provides as follows for PWD designation:

Section 2 of the EAPWDA states:

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;...

"prescribed professional" has the prescribed meaning;

(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.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal...

Section 2 of the EAPWDR states:

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.

(2) For the purposes of the Act, **"prescribed professional"** means a person who is authorized under an enactment to practice the profession of

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- (a) medical practitioner,
 - (b) registered psychologist,
 - (c) registered nurse or registered psychiatric nurse,
 - (d) occupational therapist,
 - (e) physical therapist,
 - (f) social worker,
 - (g) chiropractor, or
 - (h) nurse practitioner.

The Ministry argues that, while she met the age and duration requirement, the appellant was not eligible for a PWD designation because she does not have a severe mental or physical impairment. The Ministry states that there is no indication how much longer the appellant takes to perform certain activities and handrails and carts are not assistive devices according to the legislation and therefore the appellant does not have a severe physical impairment. There are no significant deficits in terms of cognitive and emotional functioning and while the assessor comments that the appellant said those impacts are due to depression, he does not indicate a formal diagnosis of depression and as a result, the Ministry argues the appellant did not establish a severe mental impairment.

In terms of DLA, the Ministry notes that the appellant is independent in all those activities. While the assessor comments that the appellant may need help with housekeeping, there is no indication that she actually requires assistance and the report mainly shows she can perform those activities independently. The Ministry argues that the appellant's condition does not establish significant restrictions to her DLA. Finally, the Ministry argues that it cannot be determined that significant help is required from other persons for the appellant to perform her DLA.

The appellant argues that she is a person with severe physical impairments and she cannot work to support herself because of poor health. She argues that her present allowances are so low that she often cannot afford to buy the medication (vitamins) she needs and she has a hard time meeting ends. She would prefer to work if she could but her physical condition does not allow her to work and therefore she should be granted a PWD designation. She argues that previous MRI show that her health is in precarious condition and that she feels it is deteriorating.

The panel finds it was reasonable for the Ministry to determine the appellant did not establish a severe physical or mental impairment. While it is obvious the appellant suffers from back pain because of a degenerative disc disease, the impairment is not so severe as to prevent her from being independent in most activities and in climbing stairs, walk more than 4 blocks or carrying items up to 7 kg. In terms of mental impairment, the physician (medical practitioner) indicates a moderate impact on motivation, minimal impact on bodily functions, consciousness, impulse control, attention / concentration and executive but no impact on all other functions. The appellant's condition is most certainly difficult but not severe, as determined by the Ministry.

The panel also finds it was reasonable for the Ministry to determine, based on the opinion of a prescribed professional, that the appellant did not establish the impairment directly and significantly restricts her ability to perform DLA. In fact, the prescribed professional, the appellant's physician, is of the opinion she is independent in all DLA but she takes significantly longer with some of them, without specifying how much so. The physician indicates she needs a cart to carry her purchases

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back home but a cart is not really an assistive device as such a device must be "designed" to enable a person to perform a DLA, which is clearly not the case of a cart. The physician also comments that the appellant may need help with housekeeping but the appellant in fact does assist an elderly neighbour in performing such tasks and there is no indication that the appellant actually requires help to perform those activities. Further, the physician is of the opinion that there is not one DLA that the appellant cannot perform independently. While the appellant's condition, when she is unable to sleep and gets tired, does restrict her ability to perform her DLA, her physician does not provide an opinion that this condition would restrict her ability continuously or periodically for extended periods and that, in those circumstances, she would require help to perform those activities. Therefore, it was not unreasonable for the Ministry to determine that the appellant had not established significant restrictions to her DLA.

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