

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In the reconsideration decision of December 24, 2009, the appellant was denied Persons with Disabilities designation (PWD) by the ministry. Specifically, the minister is not satisfied that the appellant has a severe mental or physical impairment. Further, the ministry finds that, in the opinion of a prescribed professional, the appellant's impairment does not directly and significantly restrict her ability to perform daily living activities either continuously, or periodically for extended periods. Finally, the ministry finds that, in the opinion of a prescribed professional, as a result of these restrictions, the appellant does not require help to perform those activities.

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 reconsideration consisted of the Physician's Report (PR) and the Assessor's Report (AR), both completed by the appellant's physician of 24 years and both dated August 19, 2009, a letter from the appellant's physician dated December 2, 2009, a letter from an orthopedic physician dated September 24, 2009, and undated letter from the appellant's daughter and two undated self reports written by the appellant.

In the self reports the appellant describes the limitations on her daily activities as a result of the constant pain in her feet. She notes that she is depressed as she no longer can do her job or keep up with her "daily living". She further reports that her children come by to help her with cooking, cleaning and shopping. This is also reinforced in the letter from the appellant's daughter where she states that she has to drive to her mother's house almost every day in order to assist with household chores and shopping.

In the PR, the appellant's physician diagnoses the appellant with Bilateral Plantar Fasciitis and Anxiety Disorder Reactive. The physician writes that the appellant has become incapacitated and has severe pain in both feet and cannot stay on her feet for more than a few minutes. The physician reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. and remain seated less than 1 hour. The appellant's physician checks emotional disturbance, motivation and sustained concentration as significant defects with the appellant's cognitive and emotional function and notes that the appellant's condition affects every aspect of the appellant's life and daily functioning.

In the AR the appellant's physician checks bodily functions and emotion as having moderate and major impact respectively on daily functioning and checks six other areas as having minimal impact in the area of cognitive and emotional functioning. The physician further notes in this area that the appellant is very anxious and upset over her incapacities due to this disability. The physician checks 22 out of 33 daily living activities as being independent with the rider that they all take significantly longer to accomplish and that she needs a helper at home. If not for family help, the appellant's physician states that she would require assisted living or a home maker.

The orthopedic physician's report diagnoses the appellant with some metatarsal head overload, as well as hallux valgus or bunion and hypermobility of the first ray. The report also acknowledges that the appellant has had past surgeries of Tubal ligation, hysterectomy, right ovarian removal as well as 3 lung surgeries. While he suggests physiotherapy, stretching and well padded inserts, he says that: "there is nothing really operative" and "I do not think she would necessarily be a good surgical candidate anyways given her medical conditions."

In the letter of December 2, 2009 from the appellant's physician she states that the orthopedic physician's letter proves that the appellant has a severe foot condition. She says that while the appellant is able to lift 15 pounds, that she is not able to walk with it due to her severe sore feet. She further states that if the appellant "had no family that she would need a home care worker every day to help her with her daily life." She concludes her letter by stating that, "in my opinion, this patient is severely disabled both physically and emotionally " and..."Both conditions together make her totally disabled with every function of her life."

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the ministry's reasonableness in denying the appellant a PWD designation.

The EAPWDA, Section 2 sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the person's ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help or an assistive device to perform those activities.

The ministry's position is as follows: The minister agrees that the appellant has reached the age of 18 and that her impairment will continue for at least 2 years. The doctor indicates that the appellant's condition has a moderate effect on her cognitive and emotional functioning with the explanation that she is "very upset over her painful feet." However, there is only one major impact to emotion as described in the disability application, with a number of minimal impacts. There are no daily living activities impacted by a cognitive disorder. Therefore the minister is not satisfied that the appellant has a severe mental impairment.

The doctor confirms that the appellant has limitations in the areas of walking, stair climbing, lifting, and sitting, but that she is independent with her mobility/physical ability in all areas except when it comes to carrying and holding items. The doctor also indicates that it takes the appellant longer to walk and to climb stairs, but she does not indicate how much longer it takes the appellant to perform these activities or if she requires assistance periodically or periodically for extended periods of time. Therefore the minister is not satisfied that the appellant has a severe physical impairment.

The ministry acknowledges that the appellant has a medical condition. While the physician speaks to some restrictions in her ability to perform daily living tasks, there is no information in the PWD application to explain/describe that the impairment directly and significantly restricts her ability to perform daily living tasks continuously or periodically for extended periods of time. Also, the appellant's recent orthopedic consultation on September 24, 2009 suggests that her medical condition may be improved with counteractive treatment such as physiotherapy and well-padded forefoot inserts.

The ministry concludes that while the appellant meets the age and duration criteria set out in the legislation, she does not meet the remaining criteria to establish eligibility for PWD designation.

The appellant argues that she has a severe physical impairment that impacts every facet of her life. She has to rely on the good will of her two daughters, son and former husband to provide her with meals that she can micro-wave, clean her house, shop, carry groceries and cut her lawn. She can no longer walk for her own exercise and she even has to rely on others to walk her dog. She cannot sleep in a bed due to the pain in her feet, often having to sleep sitting up on a couch. This leaves her feeling tired and often unable to remember things. She requires the use of a cane in order to walk and concludes with the

ATTACH EXTRA PAGES IF NECESSARY

statement, "I am depressed, exhausted and in constant pain."

In reviewing the criteria denied by the ministry in this case, the panel relied heavily on the physician's letter of December 2, 2009 as it was written by the same physician who completed the PR and AR of August 19, 2009. As this letter was written almost 4 months after the PR and AR, the panel viewed it as a clarification and an update of the prescribed professional's opinion of the appellant.

Regarding the existence of a severe physical or mental impairment the physician writes, "Her feet hurt all the time every day 24 hours a day. The pain in her feet wakes her at night so that she has very poor sleep. This causes emotional distress with poor memory and depression." She further writes, "In conclusion, in my opinion, this patient is severely disabled both physically and emotionally." The panel finds that the ministry did not reasonably conclude that the appellant does not have a severe physical or mental impairment.

Regarding the appellant's ability to manage daily living activities, the physician writes in the PR that, "This condition, affects every aspect of this lady's life and daily functioning." The appellant's physician further clarifies some problems that are unclear with regard to daily living activities. For example, in her letter she states that while the appellant can lift 15 lbs. standing still, she cannot walk at all with any weight because of her sore feet. Also, in her letter, the appellant's physician states that, "Since she is so limited in mobility, she gets very upset and depressed and cannot function in social activities and daily living activities. Her cognitive and emotional difficulties have a major impact on her daily functioning." 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 daily living activities as required by section 2(2)(b)(i) of the EAPWDA.

In determining whether the ministry reasonably concluded that the appellant does not require help with DLA, the panel relied on the evidence submitted in the AR and in the physician's letter. In the AR, Section A – Living Environment, the physician notes that the appellant needs help at home. In Section C-Daily Living Activities, the physician writes that the appellant, "could not use public transit as cannot walk any distance to a bus stop or stand any time at a bus stop". Also in this section, the physician answers that the appellant needs a "helper at home" to the question "please describe the support/supervision required which would help to maintain her in the community." In her final statement in the AR the physician writes that her family helps out at present and without that help the appellant "would need assisted living or a home maker." Finally, in her letter the physician writes, "In conclusion, in my opinion, this patient is severely disabled both physically and emotionally. Both conditions together make her totally disabled with every function of her life." Therefore, the panel finds that that the appellant's need for help has been established. As the panel determined that the evidence does establish a direct and significant restriction to daily living activities, the panel finds that the ministry was not reasonable in its determination that the requirement for help to perform the daily living activities under section 2(2)(b)(ii) of the EAPWDA had not been met.

The panel finds that the 5 criteria for PWD designation have been met by the appellant. The panel finds that the ministry's decision was not reasonably supported by the evidence and rescinds the decision.