

PART C – Decision under Appeal

The following is a summary of the Ministry Reconsideration Decision of September 7, 2010, which denied the appellant the Persons with Disabilities (PWD) designation:

- You have met the age requirement.
- Your medical practitioner confirms that your impairment is likely to continue for at least 2 years.
- The minister is not satisfied that you have a severe physical or mental impairment.
- Your prescribed professional does not confirm that your impairment directly and significantly restricts your ability to perform daily living activities either continuously or periodically for extended periods.
- Your prescribed professional does not confirm that as a result of direct and significant restrictions, you require help to perform daily living activities (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

PART E – Summary of Facts

The evidence before the ministry was based on the medical diagnosis and information provided by a prescribed professional who has been the appellant's physician for 18 years. This same physician also responded to a number of questions presented to him in a letter from the appellant's advocate. Further information was obtained from a social worker who is also a prescribed professional and provided the assessor report. The appellant also provided letters from a mental health clinician, a family counselor as well as two letters from prescribed professionals to a lawyer regarding a prior motor vehicle accident.

The physician report diagnosis includes post traumatic stress disorder (PTSD) and chondromalacia in the right knee as well as soft tissue pain mid/low back. These medical conditions cause the appellant to become chronically anxious and easily stressed. Her innate cognitive abilities are low normal and chronic right knee and low back pain limit her ability to walk far or carry loads. Her physician indicates functional skill limitations to walking 2-4 blocks unaided, lifting 15-35 pounds, sitting 1-2 hours and she is able to climb 5 steps unaided. In terms of mental status, the physician indicates three deficits to cognitive and emotional functioning -- language, memory and emotional disturbance. In reply to the four questions asked of physician in the letter from the advocate, his responses are as follows:

Q – Are PTSD or back pain severe conditions?

A - Back pain prevents doing heavy housework, carrying groceries or yard work. Will leave PTSD to mental health workers.

Q – Please comment on severity of cognitive limitations.

A - In the low end to the low-average range. Little ability to retain new skills.

Q - Effects of depression and anxiety and do these result in a severe restriction of daily functioning?

A - Causes her to take longer doing normal daily tasks. Anxiety symptoms are daily and pervasive.

Q - Comment on degree of restriction to shopping and outside mobility.

A - Children clean, sweep and vacuum as this hurts her back. She prepares meals and washes up. Children make their own lunches, as she takes too long. Son lifts groceries.

The assessor reports two minimal impacts on daily functioning, bodily functions, insight and judgment. There are five moderate impacts, attention/concentration, executive, motivation, motor activity, and language. She also reports three major impacts to emotion, memory and neurological problems. There is no indication that continuous help is required with DLA. Periodic help is required with laundry, basic housekeeping, shopping, making appropriate choices and carrying purchases home. The letters from the Mental Health Clinician and the Family Guidance Association indicate that the appellant has been receptive to counseling. She will require further trauma counseling as well as further psychological assessment to progress toward greater independence.

The appellant provided evidence in the PWD Applicant Information Form, which was included in her Request for Reconsideration. She states that her back hurts when she uses her arms for any length of time or when picking articles up and her knee hurts all the time. She indicates that she can't read very well, comprehension is really hard for her and she gets migraine headaches from the tension in her back. The appellant also states that she cannot work anymore since the motor vehicle accident that she was involved in. She does try to do normal chores and becomes mad at herself for being so slow. She is scared to go for rides with her kids because if the car has to stop suddenly, it would really hurt her back. Long walks, or uphill walking is very painful. She also referred to the physician's answers to the four-question letter dated May 31, 2010 that her advocate wrote her physician, which appears under the ministry facts. The appellant also referred to the fact that she suffers from PTSD as a result of sexual abuse as a child and spousal abuse during a marriage, which she is no longer in. There is a restraining order against her former husband. She attends counseling which helps somewhat with depression over the challenges in her life.

PART F – Reasons for Panel Decision

The issue in this hearing is the reasonableness of the ministry's decision to deny the appellant the PWD status. The following legislation applies.

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E**Employment and Assistance for Persons with Disabilities Act****Section 2**

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;

"health professional" repealed

"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.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation**Part 1 Section 2****Daily living activities**

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 argues that in terms of physical abilities, the appellant's physician indicates skill limitations in walking 2-4 blocks, lifting 15-35 pounds, climbing 5+ steps, and sitting 1-2 hours. No assistive devices are routinely used to help compensate for a physical impairment. As the functional skill limitations are not extraordinary and more in keeping with a moderate deficit, the ministry is not satisfied that the appellant has a severe physical impairment.

In terms of mental status, the physician indicates three deficits to cognitive and emotional functioning – language, memory and emotional disturbance. He explains that the appellant has "poor level of literacy, chronically anxious and depressed intermittently, and poor memory and limited innate ability to learn". There is no impact to 8 of 11 other aspects. The assessor reports a number of minimal to moderate impacts on daily functioning, as well as 3 major impacts to emotion, memory and other

neurological problems. After considering all of the information presented, the ministry acknowledges that the appellant has some difficulties with anxiety. However, the ministry is not satisfied that she has a severe mental impairment.

The physician reports periodic restrictions to daily shopping and mobility outside the home described as "limited ability to walk far or carry heavy loads". No restriction with 8 of 10 other DLA including social functioning. The assessor indicates periodic help required with laundry, basic housekeeping, going to and from stores, reading prices/labels, making appropriate choices, and carrying purchases home. As the restrictions to DLA and need for assistance is periodic and mainly related to heavier tasks, the prescribed professionals do not demonstrate a direct and significant restriction in the appellant's ability to perform DLA either continuously or periodically for extended periods. It therefore cannot be determined that significant help is required to do them.

The appellant argues that she has a severe impairment, which restricts her ability to manage daily living. She suffers from PTSD as a result of sexual abuse as a child and spousal abuse in later life. She also suffers from arthritis, chondromalacia right knee and soft tissue pain in the area of the mid-low back resulting from a car accident in 2005. At the time of the Reconsideration Decision, the appellant was a single parent with two children at home. She informed the panel that her other two children have since returned home to stay with her, awaiting the results of a child custody case before the courts.

The appellant described her ability to do DLA as being very slow which she finds frustrating. Her children also suffer from various learning difficulties. They do, however, help her on a daily basis with making meals, doing household chores and shopping. She indicates that her back hurts when she uses her arms for any length of time when lifting. Her knee hurts when she has to stand for long periods and when climbing stairs. She attends counselling which helps with depression.

The panel finds that the ministry's decision, which indicates that the appellant does not have a severe physical or mental impairment, is reasonably supported by the evidence submitted in the Physician and Assessor Reports. The physician has indicated that the appellant has been his patient for 18 years and that her medical conditions cause her to become chronically anxious and easily depressed. Her innate cognitive abilities are low-normal. An injury in a motor vehicle accident in 2005 limits her ability to walk far or carry loads. He has indicated that she does not require any prostheses or aids for her impairment. For functional skills, he indicates that she is able to walk unaided 2-4 blocks, climb 5+ stairs unaided, carry 15-35 pounds but not repeatedly, and can sit 1-2 hours. These functional skills are all rated on the high end of choices available to the physician. He later indicates on the DLA page of the physician report that periodic is ticked for daily shopping and mobility outside the home with the notation again that these activities limit her ability to walk far and carry heavy loads. The panel does not find that she can't do activities, which require walking that isn't far, or that she can't carry reasonable loads. The panel does not find that these physical limitations establish a severe physical impairment. Significant deficits are indicated for cognitive and emotional functioning in language, memory and emotional disturbance. There is no impact to 9 of 12 other aspects which the panel do not find an indication of a severe mental impairment

The assessor indicates that she is a social worker, has known the appellant for six weeks and was contracted to complete the assessor report. She has based her report on the Physician Report,

information provided by the appellant, letters from the physician's regarding the motor vehicle accident in 2005, and talking to the appellant's counsellors. She finds that mobility is continuously restricted for climbing stairs, which the appellant avoids. Other activities take longer and the children help. For cognitive and emotional functioning, the assessor determines major impact with emotion, memory and other neuropsychological problems. Of the other 11 functions, 4 have no impact, 2 have minimal impact and 5 have moderate impact. The assessor indicates anxiety and episodic depression have major impact on day-to-day functioning. The appellant has longstanding issues which impact household tasks. She is able to cope by simplifying routines and attending counselling. The assessor indicates that it is unlikely that the appellant will achieve higher functioning than her current level.

The panel finds that the ministry's decision which indicates that the impairment does not directly and significantly restrict the appellant's ability to perform DLA either continuously or periodically for extended periods is reasonably supported by the evidence. The physician indicates that the appellant's impairment directly restricts her DLA in that she is periodically restricted with daily shopping and mobility outside the home. These activities are noted to affect her walking far and carrying heavy loads. The panel finds no indication that she is seriously affected by carrying normal loads a reasonable distance. There is no restriction indicated for personal self care, meal preparation, management of medications, basic housework, mobility inside the home, use of transportation, management of finances or social functioning. He indicates, "She shops, works, cleans and looks after the household". The assessor indicates that for DLA, the appellant is independent for all 8 personal care activities. For laundry and basic housekeeping, periodic assistance is required. The appellant modifies her routine to avoid heavy tasks and the children help. For shopping the appellant requires periodic assistance with going to and from stores, reading labels, making appropriate choices and carrying purchases. She is independent for paying for purchases. The appellant is independent for meal planning, food preparation, cooking, food storage, banking, budgeting, paying bills, and filling, taking and storing medications. Periodic support is required for social functioning. None of the 34 activities are indicated to require continuous assistance.

The panel finds that the ministry's determination that it has not been established that the DLA are directly and significantly restricted so that it cannot be determined that help is required to perform those activities, is reasonable. The panel therefore confirms the Ministry Reconsideration Decision under the EAA, Section 24 (1) (a) and Section 24 (2) (a) as it is reasonably supported by the evidence.