

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated January 18, 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 assistance 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**

The evidence before the Ministry at reconsideration consisted of a letter from the appellant's prescribed physician dated December 21, 2009, a Self-report, a Physician's Report dated July 30, 2009, and an Assessor's Report dated July 30, 2009, and appellant's request for Reconsideration dated December 12, 2009.

The Physician's Report diagnoses the appellant with depression, anxiety and back pain, he also reports that the appellant feels down and anxious a considerable amount of time and that the appellant is unable to sit for long periods of time due to back pain. He also reports that the appellant has rotator cuff pain (decreased) shoulder mobility (increased) pain. The report also indicates that the appellant can walk 4+ blocks unaided, climb 5+ stairs unaided and can lift 15-35 lbs and remain seated for 2-3 hours.

In the Assessor's Report, as assessor, the prescribed physician indicates that the appellant can independently manage the majority of mobility and physical functions. He also stated that while the appellant requires periodic assistance with lifting and carrying and holding, no narrative is provided to explain the frequency and duration of this assistance.

In terms of cognitive and emotional function in the Physician's Report, the appellant's prescribed physician indicates that there are deficits with cognitive and emotional function in areas of emotional disturbance, motivation and attention; however in the assessor section of the appellant's application, he indicates that the appellant's impairment has a moderate impact on emotion.

In terms of assistance with daily living activities, the appellant's prescribed physician does not indicate that the appellant is restricted in ability to manage daily living activities. While he notes that the appellant requires periodic assistance with basic housekeeping, going to and from stores, carrying purchases home and budgeting, no explanations are provided to describe the frequency and duration of this assistance. The prescribed physician reports that the appellant requires periodic assistance with getting in and out of a vehicle, depending on how high off the ground the vehicle is. The prescribed physician also states that the appellant requires periodic assistance with social functioning in the areas of; being able to deal appropriately with unexpected demands, and ability to secure assistance from others. No explanation or a description of the degree and duration of the support/supervision required is included in the PWD application.

The ministry concludes that the information from the prescribed physician does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods.

In the appellant's application for PWD status Self-report, the appellant states that she had an accident in 1979 and damaged 3 vertebrae and was put in a body cast. In 1981 she had 4 or 5 surgeries, she had metal rods put in and some removed. She has a pinched nerve and some discomfort in her hip if she sits too long. She also states that she has rotator cuff problem (right), she said she is trying to use it the best she can hoping that she does not have to have more surgery. She went on to state that she suffers from depression (primary) and anxiety (secondary) and has problems with her muscles in her arms and legs and if she uses them too much they hurt.

At the hearing the appellant presented two Imaging Consultation Reports addressed to the appellant's prescribed physician regarding the appellant's right shoulder, dated 08/December, 2006 and March 13, 2007, a letter from a Doctor of Chiropractic dated April 12, 2007, relating to the appellant's right shoulder pain, a letter from an Orthopedic Surgeon dated June 12, 2008 referring to the appellant's right shoulder pain in which he stated that the appellant's x-rays were unremarkable and refers her to physiotherapy.

The appellant also presented at the hearing a hospital consultant's letter dated March 18, 2008, which in summary recommends conservative treatment for the appellant's back symptoms and if symptoms worsen to consider MRI if this is the case. The consultant also recommends that the appellant to see a physiotherapist and start to do back exercises regularly. Also presented by the appellant, a mental health services report dated May 5, 2008 addressed to the appellant's prescribed physician, in which the report comments on the appellant's relationship stress due to her husband's stroke and resulting brain damage. The report states that the appellant's mental status is alert and well oriented, and further that the appellant is on a maximum dose of antidepressant and trazadone with helps her sleep.

The panel admitted this written evidence pursuant to section 22(4) of the EAA in support of the evidence which was before the ministry at the time of reconsideration.

At the hearing the appellant stated that she no longer lives with her husband to whom she was the primary caregiver after he suffered a stroke, she said that she could not cope with the stress and needed to look after herself. She admits to taking Tylenol 3, gabapentin, and cortisone shot for pain. She said that she takes trazadone for depression, but has started to lower the dose as she feels she is overcoming her depression since leaving her husband. The appellant admitted that she can drive her own car, shop for groceries and perform all DLA's independently, and only needs assistance from her roommate when she has pain, which she admits she can manage with the aid of medication. The appellant stated that she has further medical reports to present after the date of May 2008 and has not started physiotherapy as recommended due to lack of funds.

At the hearing, the ministry stood by the reconsideration decision and stated that the evidence of a prescribed professional does not indicate a severe physical or mental impairment which creates a significant restriction with Daily Living Activities (DLA) or the need for significant assistance from another person. The ministry reviewed the legislation and medical evidence provided by the physician and the assessor which was before the ministry at reconsideration and stood by the reconsideration decision.

The panel finds that: (a) the appellant suffers from depression, anxiety and back pain (b) The prescribed physician reports that the appellant feels down and anxious a considerable amount of time and that the appellant is unable to sit for long periods of time due to back pain. (c) The prescribed physician indicated that the appellant has rotator cuff pain (decreased) shoulder mobility (increased) pain. The report also indicates that the appellant can walk 4+ blocks unaided, climb 5+ stairs unaided and can lift 15-35 lbs and remain seated for 2-3 hours; deficits with cognitive and emotional function in areas of emotional disturbance, motivation and attention; (d) the appellant is independent with almost all daily living activities, may require periodic assistance with basic housekeeping, going to and from stores, carrying purchases home and budgeting. (e) receives assistance from room mate when needed and from her son who visits her when help is needed. (f) the additional support evidence presented at the hearing does not confirm that the appellant has a severe physical or mental impairment.

ATTACH EXTRA PAGES IF NECESSARY

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment, and that her daily living activities (DLA) are not in the opinion of a prescribed physician, 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 the medical practitioner, to continue for at least 2 years. Section 2(2) (b) (i) requires that the impairment, in the opinion of the 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 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, means the following activities: (i) preparing own meals (ii) managing personal finances (iii) shopping 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. Section 2(1) (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's position is that the evidence does not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts DLA or necessitates help with DLA.

The appellant's position is that she is eligible for PWD status due to her disabilities and resulting restrictions and that her impairment does significantly restrict her activities of daily living and that she requires assistance from her son and a room mate when in pain to perform daily living activities.

Regarding the existence of a severe physical impairment, the panel finds that the evidence confirms physical impairments of back and shoulder pain. The panel acknowledges the appellant's cumulative effect of all the diagnoses together, but the appellant's prescribed physician states that she can independently walk indoors and outdoors, climb stairs and stand with periodic help to lift/carry/hold. The appellant's prescribed physician further reports that the appellant may require periodic assistance with basic housekeeping, going to and from stores, carrying purchases home and budgeting, however, the frequency and duration of periodic assistance is not addressed. The panel acknowledges that the appellant has some physical limitations, but the evidence does not establish a severe physical impairment.

The panel finds that although the appellant describes her pain and the physical impairments as severe, the appellant's own evidence in the form of letters and her own evidence at the hearing reflected a large degree of independent functioning with DLA. The panel also finds that the prescribed physician has not provided enough evidence to confirm a severe physical impairment. Therefore the ministry reasonably concluded that the evidence does not establish a severe physical impairment.

Respecting the existence of a severe mental impairment, the prescribed physician diagnoses depression and anxiety. The prescribed physician stated in a letter dated December 21, 2009 that the appellant has difficulty with concentration and social networking due to her anxiety and depression. He further reports all DLA of a cognitive nature are performed independently including social functioning. The prescribed physician, as assessor only indicated a moderate impact in 1 of 13 specified aspects of daily functioning. The panel finds that the prescribed professional has not provided enough evidence to confirm a severe mental impairment. Therefore the ministry reasonably concluded that the evidence does not establish a severe mental impairment.

As neither a severe physical or mental impairment has been established, the panel finds that the ministry reasonably determined that the legislative requirement of section 2(2) or the EAPWDA has not been met.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the assessor's report in which the prescribed physician establishes that the appellant is independent in 23 out of 28 of DLA's and independent in 3 of 5 areas of social functioning.

The panel finds that while the evidence establishes that the appellant's impairment impacts her ability to perform some DLA and that she has periodic assistance of unspecified frequency and duration to complete some DLA's, the prescribed professional's evidence regarding independence of the appellant to complete DLA's does not establish that the appellant's impairment has directly and significantly restricted the appellant's ability to perform DLA's. Therefore the panel finds that the ministry reasonably concluded 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 DLA 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, while the panel finds that the appellant states that she receives assistance from her roommate and son when in pain to complete DLA, as the evidence of a prescribed professional establishes that the appellant is independent with the majority of DLA, the appellant's need for help, as defined in the legislation has not been established.

The panel finds that the ministry reasonably determined the requirement for help to perform the DLA under section 2(2)(b)(i) of the EAPWDA has not been met.

The panel therefore finds the Ministry's decision in this case was reasonable based on the evidence and was a reasonable application of the legislation in the circumstances of this appellant.

The panel is unanimous in confirming the reconsideration decision of the Ministry under section 24 (2) (a) of the Employment and Assistance Act (EAA).