

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated November 10, 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

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 the time of the reconsideration decision included: (a) Request for Reconsideration, dated August 27, 2010; (b) Radiologist report dated March 5, 2009 and May 26, 2009; (c) Persons with Disabilities Designation Application; (i) Applicant Information (AI), dated March 24, 2010, (ii) Physician Report (PR), dated April 09, 2010, (iii) Assessor Report (AR), dated April 09, 2010.

The PR confirms the following diagnosis; diabetes mellitus (DM), arthritis, morbid obesity, back/hip pain and notes that, "these diagnoses all inter-related to create disability and magnify symptoms." The Prescribed Professional (PP) writes that, "obesity is severe, associated with DM, poor balance, back, knee and hip pain due to weight, difficult to control weight despite attempts at weight loss and medications are adjusted to control DM but disability complications will persist."

The PR indicates that the appellant uses toileting and bathing aids and grab bars. Functional skills are listed as: walk 4+ blocks (takes long time), climb 5+ steps (has to be slow and careful), 5-15 lbs (unable to lift from ground level) and no limitation to the duration of sitting (with good chair support). No cognitive or emotional deficits are indicated.

The AR notes that the appellant lives with her son and that the appellant has good abilities in communication and is independent in 2/6 aspects of mobility (walking indoors, standing); and requires periodic assistance with 2/6 aspects (lifting, carrying and holding) and takes significantly longer in 2/6 aspects (walking outdoors and climbing stairs) and states that the appellant takes ½ hr to walk a distance that normally would take 10 minutes (or 3 times longer). Lifting is limited by the weight of the object; the appellant cannot lift from the ground. The AR states that the appellant climbs stairs one step at a time, needs handrail has decreased power in legs and poor balance when going downstairs.

With regard to Daily Living Activities (DLAs) the AR indicates that the appellant is independent in all but 5/28 aspects of DLAs; requiring periodic assistance in bathing (she takes showers), laundry (son helps with carrying the laundry), going to and from stores (gets a ride with girlfriend), carrying purchases home and getting in and out of vehicles. Dressing and basic housework is noted to take significantly longer.

The AR has indicated N/A (not applicable) to the aspects of Social Functioning.

The AR confirms that the appellant receives assistance from her son who lives in the house, and from a girlfriend who helps when shopping. No comments are noted by the AR to the question of, if help is required but there is none available, please describe what assistance would be necessary.

The appellant stated at the hearing that she has been hospitalized for several serious reasons/complications for the last 2 months. She states that she now is recovering but is weak and uses a walker for mobility. The appellant advised that she is suffering from depression due to being housebound and that she relies heavily on the help of others to get her out of the house to appointments or for shopping. The AI notes that she is in a lot of pain but when she does housework,

she paces out the activities and does it slowly. She is finding it difficult to put on socks, and going up and down stairs as she is frequently dizzy and off-balance.

The panel finds the following fact: (a) the PP has not listed depression as a diagnosis.

PART F – Reasons for 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 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 evidence is that the information contained in the appellant's PWD application and subsequent submissions from her physician are not sufficient to determine that she meets the legislative criteria for designation as a PWD. Specifically, the PP does not indicate that the appellant has a severe physical impairment with her diagnosis of DM, morbid obesity, arthritis and back/knee and hip pain. The DLAs do not appear to be significantly restricted as the AR states that the appellant is independent in majority of DLAs (23/28 aspects) with 5 aspects of DLAs requiring periodic support and 3 aspects of DLAs taking significantly longer to complete.

The appellant's position is that the evidence establishes that the appellant does have a severe physical 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. Specifically, that the appellant has a severe physical impairment with her severe obesity, she is in pain, is housebound and relies on others for transportation and grab bars, a currently a walker for mobility. The appellant argues that all together the information establishes the direct and significant assistance and supervision by another person to complete her DLAs is required and therefore she meets all the legislated criteria.

Regarding EAPWDR section 2(2), the confirmed diagnosis of DM, morbid obesity, arthritis and knee/back/hip pain do not, automatically, confirm a severe impairment. Specific notes from the PR include that, "these diagnoses all inter-related to create disability and magnify symptoms." The PP documented that the appellant's, "obesity is severe, associated with DM, poor balance, back, knee and hip pain due to weight, difficult to control weight despite attempts at weight loss and medications are adjusted to control DM but disability complications will persist." The PR noted that Physical Functioning is good being able to: walk 4+ blocks (takes long time), climb 5+ steps (has to be slow and careful), 5-15 lbs (unable to lift from ground level) and no limitation to the duration of sitting (with good chair support). No cognitive or emotional deficits are indicated. The appellant advised that she is in pain much of the time, is currently housebound and is recovering from nearly 2 months in hospital from several serious issues. The PP confirms no impacts to cognitive or emotional functioning. The PP does confirm with documentation that the appellant's morbid obesity is severe but as the PR confirms moderate physical functioning; combined with the PR's record of the appellant's ability to complete physical functioning albeit slowly, the panel determined that given the evidence the ministry was reasonable in the determination that the legislative test of section 2(2) of the EAPWDA had not been met.

Respecting the existence of a severe mental impairment, there is no evidence provided by the PP to indicate or confirm any mental impairment diagnosis. No significant cognitive or emotional deficits were noted in either the PR or AR. Social functioning is noted as being N/A. The appellant advised that she is suffering from depression as a result of her physical state, from being in the hospital, and from being housebound. As evidence is absent regarding the confirmation of any mental impairment from a PP and not noted in either the PR or AR, it is not possible to confirm a mental impairment, severe or otherwise. 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, evidence submitted by the PR and AR provides that the appellant is independent in her appellant ability to perform DLAs in 23/28 aspects. Periodic assistance is required in bathing (she takes showers), laundry (son helps with carrying the laundry), going to and from stores (gets a ride with girlfriend), carrying purchases home and getting in and out of vehicles. Dressing and basic housework is noted to take significantly longer.

The AR does not indicate that any assistance is required for Social Functioning although the AI notes that she relies on her son and on a girlfriend to assist her with transportation, laundry, shopping, carrying and lifting. The AI further noted that she is slowly recovering from nearly 2 months in hospital and currently using a walker to move about and is nearly housebound at this time. In the absence of any additional evidence to confirm the appellant's current need of assistance, the evidence submitted at the time of reconsideration decision establishes that the appellant requires minimal assistance in that she is independent in almost all DLAs. Therefore, the panel concluded, given the evidence that periodic assistance was only required for 5/28 aspects of DLAs and no Social Functioning assistance required, the ministry made a reasonable determination 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, the AR confirms the appellant requires periodic assistance in 5/28 aspects of DLAs that of: bathing (she takes showers), laundry (son helps with carrying the laundry), going to and from stores (gets a ride with girlfriend), carrying purchases home and getting in and out of vehicles. Dressing and basic housework is noted to take significantly longer. The PR and AR both confirm that the appellant utilizes and requires bathing and toileting aids (grab bars) and the appellant gave evidence that she is currently using a walker during this time of recovery from her extended stay in hospital. The PP makes no notations in the AR that if help is required but there is none available; please describe what assistance would be necessary. Given that the evidence confirms that the appellant does not require the significant help or supervision of another person to complete DLAs, the ministry reasonably determined that it could not be established that significant help is required. As such, the panel finds that based on the whole of the evidence that the appellant does not have a severe physical or mental impairment, that the ministry reasonable determined that the appellant's impairment does not establish a direct and significant restriction and that as a result of those significant restrictions, the person requires help to perform those activities under section 2(2)(b)(ii) of the EAPWDA.

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