

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated November 24, 2010 which found that the appellant did not meet three of the five 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 two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that 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 consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information, 3 pages, undated, physician report, 7 pages, dated February 22, 2010, and assessor report, 10 pages, dated February 22, 2010;
- 2) Letter from the ministry to the appellant denying her request for a person with disabilities designation and enclosing the decision summary, 4 pages, dated September 3, 2010;
- 3) Letter from the physician who completed the PWD application to the ministry, 1 page, dated September 14, 2010, stating in part that the physician has reviewed previous MRI of the appellant's brain on July 30, 2010 and CT scans of July 1, 2009 and May 4, 2010 and that this investigation showed the presence of calcification and raised concerns of previous infections such as cysticercosis. Therefore, it is very likely that the appellant's current symptomatology is due to effects of this previous infection and for this reason it is also very likely that her impairment will last two years or more from today;
- 4) Letter from the appellant, 1 page, undated, stamped by the ministry as received September 21, 2010; and,
- 5) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant submitted additional documents as follows:

- 1) Hospital Radiology Consultation Report regarding CT scan of appellant's brain, 1 page, dated July 1, 2009 which concludes, in part, "...incidental note is made of two small (right 3 mm, left 6 mm) calcific foci at the vertex of the cerebral convexities; no adjacent edema is identified; these are likely longstanding and of doubtful clinical significance." and "...no acute intracranial changes are identified";
- 2) Hospital Radiology Consultation Report regarding CT of appellant's cervical spine, 1 page, dated July 1, 2009 which concludes: "...no abnormality of the cervical spine is demonstrated";
- 3) Letter from a physician who is a specialist in neurology to the appellant's family physician, 2 pages, dated May 3, 2010 which concludes in part that the appellant has what sounds like soft tissue injury to her neck as well as post-traumatic headaches, he is not certain of the etiology of her subjective memory difficulties which could simply be related to sleep deprivation and pain or part of post-concussive syndrome. He states that he will arrange for her to have a CT scan of her head which he suspects will be normal.
- 4) Hospital Radiological Consultation regarding CT scan of appellant's head, 1 page, dated May 4, 2010 which concludes, in part, "...multiple parenchymal foci of calcification... although somewhat nonspecific, this does raise concern of previous infection, such as cysticercosis";
- 5) Request by appellant's family physician for an MR Consultation, 4 pages, dated July 17, 2010;
- 6) Hospital Radiological Consultation regarding MRI of appellant's brain, 1 page, dated July 30, 2010 which concludes, in part, "...punctate foci of intracranial calcification unchanged from the previous CT...although no acute intracranial lesion is identified, previous neurocysticercosis cannot be entirely excluded";
- 7) Part of a Report by the appellant's family physician, 5 pages, undated, which states in part that the appellant came to Canada in early 2009 and suffered a severe head trauma on July 2009 when a tent pole fell on her head and she had what witnesses described as a seizure. In December 2009, the appellant was in a motor vehicle accident where there were no major damages to the car. In January 2010, a specialist in neurology was consulted due to worsening headaches and memory compromise. The CT scan of the appellant's head completed on May 4, 2010 raised concerns of a previous infection, such as cysticercosis which is a systemic illness caused by dissemination of the larval form of the pork tapeworm and involvement of the central nervous system, known as neurocysticercosis, is the most clinically important manifestation of the disease. In August 2010, the appellant was given a migraine medication which continues to provide relief from her headaches; and,
- 8) A statement by the appellant, 1 page, dated December 1, 2010.

The panel reviewed the documents and admitted them into evidence, under Section 22(4) of the Employment and Assistance Act, as being in support of the information before the ministry at the reconsideration.

In her written statement dated December 1, 2010, the appellant explains that she suffered a brain concussion in July 2009 that restricts her ability to perform her daily routines. She states that she is unable to travel outside on her own, she needs constant support when she is outside because she gets disoriented and she

suffers memory loss and forgets where she is going or what she is doing outside. She states that she cannot go on her own to doctors' appointments, shopping, recreation activities, or to pick up her children from their school. She also states that she is restricted in her ability to perform activities at home such as housework as this activity causes severe pain in her body and increases the stiffness of her neck and shoulders. Because of the strong pains in her back, neck and right arm, the appellant states she has lost her capacity to do work in her home such as washing, ironing, cooking and cleaning her apartment. She cannot cook for her family because she forgets what she is doing and once she forgot and the food caught fire. She states that in order to be safe in her own home she needs the constant supervision of her common law partner. She also states that she is unable to study or work. The appellant states that in order to function she needs constant supervision which has been provided on a daily basis by her common law partner. The appellant also states that she had to stop studying English because the college told her she cannot continue her classes because of her partial memory loss issue and subsequently she has not been able to get a good job because she lacks the English level necessary.

The physician who completed both the physician report and the assessor report for the PWD application indicated the appellant has been diagnosed, in July 2009, with a concussion. In terms of functional skills, the physician indicates that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more stairs unaided, with no limitations with lifting and no limitation with remaining seated. In the assessor report, independent function is indicated in all aspects of mobility/physical abilities. In an additional letter from the appellant's physician, dated September 14, 2010, the physician clarifies that it is likely the appellant's impairment will last 2 years or more, as she had previously indicated in the physician report that prognosis was unknown and "...it's expected that her condition improves over time." In the physician report, it is indicated that the appellant has no difficulties regarding communication. She indicates some cognitive and emotional deficits regarding executive, memory and attention and concentration. In the assessor report, the physician confirms that all areas of the appellant's communication are good. Regarding the appellant's cognitive and emotional functioning, the physician reports moderate impacts in the areas of attention and concentration as well as memory, with minimal impacts noted in the areas of consciousness, insight and judgement and executive. The physician has not reported any major impacts and the remaining 9 indicators are reported to be of no impact.

With respect to the impact on daily living activities (DLA), in the assessor report the physician indicates that most DLA are completed independently. It is indicated that the appellant requires periodic assistance making appropriate choices. Regarding social functioning, the physician reports that the appellant is independent in her ability to develop and maintain relationships, to interact appropriately with others and to secure assistance from others. The physician also indicates that the appellant has good functioning within her immediate and extended social networks. In the assessor report, the physician indicates that periodic support/ supervision is required regarding the appellant's ability to make appropriate social decisions and to deal appropriately with unexpected demands.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant 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 person 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. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, 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: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry's position is that although the appellant meets criteria 1 and 3 as set out in the legislation, in that she has reached the age of 18 and his impairments are likely, in the opinion of a medical practitioner, to continue for at least 2 years, the evidence does not establish that she has met criterion 2, 4 and 5. In particular, the ministry argues that the evidence does not show that the appellant has a severe mental or physical impairment and the prescribed professional did not confirm that the appellant's physical or mental impairment directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods so that she requires the significant help or supervision of another person to perform these activities.

The appellant's position is that the evidence establishes that she suffers from a severe physical and mental impairment as a result of a concussion. The appellant contends that the prescribed professional, along with the appellant, have provided sufficient evidence that the appellant's severe physical and mental impairment directly and significantly restricts her ability to perform many DLA, for which she requires the significant help and supervision of another person, namely her common law partner.

Regarding the existence of a severe physical impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of a concussion. The physician who completed the physician report comments that the appellant experienced a "...traumatic brain injury in July 2009" and "...since then retrograde amnesia and difficulty learning new information." In terms of functional skills, the physician indicates that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more stairs unaided, with no limitations with lifting and no limitation with sitting. In the assessor report, independent function is indicated in all aspects of mobility/physical abilities, including walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. In an additional letter from the appellant's physician, dated September 14, 2010, the

physician clarifies that the results of the MRI and CT scans of the appellant's brain raised concerns of a previous infection and that the appellant's current symptoms may be due to the effects of this infection. The Report regarding the CT scan of appellant's brain, dated July 1, 2009 concludes that "...incidental note is made of two small (right 3 mm, left 6 mm) calcific foci at the vertex of the cerebral convexities; no adjacent edema is identified; these are likely longstanding and of doubtful clinical significance" and "...no acute intracranial changes are identified." The effects of the appellant's impairment are described by the family physician in the assessor report as "...some difficulty with planning, organization and judgment" and "...difficulty learning new information". In an additional letter dated May 3, 2010, a physician who is a specialist in neurology concludes that the appellant has what sounds like soft tissue injury to her neck as well as post-traumatic headaches, and that he is not certain of the etiology of her subjective memory difficulties which could simply be related to sleep deprivation and pain or part of post-concussive syndrome. In the report by the appellant's family physician, it is stated that the appellant has upper back, neck and right shoulder strain/sprain caused by flexion-extension to the cervical spine, tension and migraine headaches, and "...subjective memory difficulties not yet diagnosed." The Report regarding the CT of the appellant's cervical spine, dated July 1, 2009 concludes that "...no abnormality of the cervical spine is demonstrated." The physician reports that the appellant was given migraine medication in August 2010 which has provided relief from the headaches. The panel acknowledges that the appellant has stated household chores cause "severe pain" in her body and "increases the stiffness of neck and shoulders", but the appellant's family physician's recommendation is for future care in the form of professional support from physiotherapy and massage therapy in order to deal with the pain and to restore the appellant's physical strength. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe physical impairment, was reasonable.

With respect to the existence of a severe mental impairment, the panel finds that the evidence of a medical practitioner does not confirm a mental health diagnosis as the specific diagnosis section of the application, with the corresponding diagnostic code, has not been completed regarding a mental impairment. The physician identifies significant deficits with cognitive and emotional function in the areas of attention or sustained concentration, memory (ability to learn and recall information) and executive (planning, organizing, sequencing, calculations, judgement), with no further comments provided by the physician in this section of the report. In terms of the degree that a mental impairment impacts the appellant's daily functioning, the assessor has gauged the impact on attention/concentration and memory as both "moderate". Additional minimal impacts are reported to consciousness, insight and judgement, and executive. No impacts are reported to bodily functions, emotion, impulse control, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. Although the appellant reports that she needs constant support and supervision because she gets disoriented, that she suffers memory loss to the extent that she was unable to continue classes to learn English, and that she believes there are safety concerns, this level of mental impairment is not reflected in the physicians' evidence. Overall, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Regarding the appellant's ability to manage daily living activities (DLA), the panel has relied on the evidence in the PWD application seen together with the updated letter from the physician. In the assessor report the physician indicates that a majority, or 30 out of 33, aspects of DLA are completed independently, including all aspects of personal care and basic housekeeping, meal planning and preparation, paying rent and bills, managing medications, and transportation. It is indicated that the appellant requires periodic assistance with making appropriate choices when shopping but the physician has not provided comments to explain the type and amount of assistance required. Although the physician identifies the need for periodic support/supervision in the areas of making appropriate social decisions and dealing appropriately with unexpected demands, again the physician has not provided comments to explain the type and amount of assistance required. The physician has also assessed the appellant as having good functioning with both her immediate and extended social networks. Although the appellant reports that she experiences impacts to her DLA including being unable to travel outside on her own or go on her own to doctors' appointments, shopping, recreation activities, or to pick up her children from their school because of disorientation and memory loss, the

panel finds that these restrictions are not confirmed by a prescribed professional. The appellant also states that she is restricted in her ability to perform activities at home such as washing, ironing, cooking and cleaning her apartment as these activities cause severe pain in her body and that in order to be safe in her own home she needs the constant supervision of her common law partner, but the panel finds that these restrictions are not supported by a prescribed professional, as required by the legislation. The panel finds that the ministry's decision, which concluded that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person, the panel relies on the information from both the assessor and the appellant that she receives help primarily from family, mostly her husband. In terms of the assistance provided through the use of assistive devices, the physician has marked this as "N/A", or not applicable. The panel finds that the appellant describes a requirement for constant support and supervision by her common law partner but the panel finds that this requirement is not supported by the evidence of the prescribed professionals. As the panel finds that the evidence does not establish a direct and significant restriction to DLA, the panel finds that the ministry reasonably concluded that the requirement for the significant help or supervision of another person or the use of an assistive device to perform DLA under Section 2(2)(b)(ii) of the EAPWDA has not been met.

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