

## **PART C – DECISION UNDER APPEAL**

In a reconsideration decision dated 2010 Jan 14, the ministry upheld the ministry's earlier decision that the appellant is not eligible to be designated a Person with Disabilities (PWD) making the following findings:

- The appellant meets the age criterion in the legislation
- The appellant does not meet the duration-of-impairment criterion.
- The appellant has not established she has a severe mental or physical impairment.
- The appellant has not established her ability to perform daily living activities (DLAs) is directly and significantly is impaired.
- The appellant has not established that, as a result of direct and significant restrictions, she requires help to perform DLAs.

## **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 contained in the appellant's PWD Designation Application and consists of a Self Report (SR) completed by the Appellant and dated August 30, 2009, a Physician Report (PR) dated September 1, 2009 and an Assessor Report (AR) dated September 1, 2009 also completed by the Appellant's physician.

The appellant submitted a letter from her physician dated January 22, 2010. This letter was not before the ministry at reconsideration. The panel finds the letter to be written testimony in support of the information and records that were before the ministry at reconsideration and admits it as evidence for purposes of this appeal, pursuant to the Employment and Assistance Act (EAA) Section 22(4)(b).

In the SR the appellant noted she required help to understand questions. She said because of arthritis, physical movements are limited and walking is limited because of arthritis in hips and feet. Her hands become very painful and swollen and wrist braces are often used to help with pain and mobility. She says she can only do the basic functions of housework and self care.

On the PR, the appellant's physician diagnoses the appellant with "severe osteoarthritis" and with depression/anxiety. The physician notes "alcoholism—dry 2 years". He says she is unable to do housework, open jars and perform significant work. He adds pain in hips, legs and feet make shopping difficult and that she uses a cane for walking. The physician confirms the appellant's impairment is likely to continue for more than 2 years. He indicates the appellant can walk unaided on a flat surface for 1 to 2 blocks, climb 2 to 5 steps, lift 2 to 7 kilograms and can remain seated less than 15 minutes. The physician indicates significant cognitive and emotional deficits in the areas of executive, emotional disturbance, motivation and attention. He notes depression/anxiety has been a long-term problem and that the appellant is on medication. The physician notes impairments to the Daily Living Activities (DLAs) of basic housework and mobility outside the home (continuous assistance required) and daily shopping with a question mark. He adds she needs help with transport—no car and notes a friend helps with housework. The physician also notes the appellant has very little money coming in, is unable to work and is in chronic pain.

On the AR, also completed by the appellant's physician, he notes her impairments are (physical) arthritis and mild joint pain and (mental) depression/anxiety. He indicates the appellant needs periodic assistance with walking outdoors, climbing stairs, lifting and carrying and holding. He indicates she is independent in walking indoors and standing. Mentally, the physician indicates moderate impacts on daily functioning for emotion, attention, executive and motivation. He indicates minimal impacts for bodily functions, insight and judgment, and memory. Regarding DLAs relating to physical impairment, the physician indicates the following regarding the appellant:

- Personal Care (8 sub categories)—independent in all.
- Basic Housekeeping (2 sub categories)—independent in one, question mark in the other (housekeeping).
- Shopping (5 subcategories)—independent in 3, needing periodic assistance in 2 (going to and from stores, and carrying purchases home).
- Meals (4 subcategories)—independent in all.
- Pay Rent and Bills (3 subcategories)—independent in one, needing periodic assistance in one (budgeting) and needing continuous assistance in one (banking).
- Medication (3 subcategories)—independent in all.
- Transportation (3 subcategories)—needs periodic assistance in all.

Regarding DLAs relating to mental impairment, the physician indicates the following regarding the appellant:

- Appropriate social decisions—"anxiety" is noted.
- Able to develop and maintain relationships—independent with a question mark.
- Interacts appropriately with others—independent.
- Able to deal appropriately with unexpected demands—requires periodic assistance.
- Able to secure assistance from others—requires periodic assistance.
- Impact on dealing with immediate social network—the physician indicates she is between good functioning and very disruptive functioning.
- Impact on dealing with extended social networks—marginal functioning.
- The physician indicates the appellant would require "friend to help" to assist her in maintaining herself in the community.

Under "Additional Information", the physician writes, "She has anxiety/depression, chronic pain from arthritis, cannot work. She is splitting with her husband—who is not working. Alcoholic. She needs financial support".

In a letter dated January 22, 2010, the physician writes:

"Concerning [*appellant name*]

"She has severe osteoarthritis—this is a significant and severe physical impairment. This restricts significantly her ability to do most daily living activities. She requires significant help to perform daily living activities.

"Yours sincerely, [*name and signature of physician*]".

The appellant and her witness made an oral submission at the hearing and the panel accepts the evidence as admissible pursuant to the EAA Section 22(4)(b). The appellant's witness is her sister, who has recently moved from another city to provide full-time live-in support to the appellant. The appellant said her living situation has improved since the arrival of her sister. She is out of an abusive relationship with her husband and has moved into a pleasant 2-bedroom house. However, her physical condition has worsened. She now has arthritis in her neck and the arthritic pain in her hip is more severe. She fears she is addicted to pain killers but continues to use them in an attempt to moderate the pain. She says her family has a history of alcoholism. She has been dry for 2 years and attends Alcoholics Anonymous meetings with her sister. She attributes her severe anxiety/depression to two abusive marriages and the pain of her arthritis. She takes medication for the anxiety/depression and now fears side effects are showing up, notably memory loss. The appellant says she was on life support for a week 2 years ago and since then has had much difficulty in sleeping. She uses up to 6 pillows to help get some rest. The witness says that while the appellant enjoys cooking, she requires help opening jars and bottles and carrying and lifting ingredients. She is assisted in moving around indoors by grabbing furniture. She can do a limited amount of housework but cannot bend down to clean the bathroom. She cannot get into and out of the bathtub on her own. She sometimes forgets whether she has taken her medication and needs help to manage that.

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is the reasonableness of the ministry's decision to deny PWD status to the appellant.

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 to perform those activities

The EAPWDR Section 2(1)(a) sets out the daily living activities referred to in criteria 4 and 5 of the EAPWDA as follows:

- 1) prepare own meals;
- 2) manage personal finances;
- 3) shop for personal needs;
- 4) use public or personal transportation facilities;
- 5) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- 6) move about indoors and outdoors;
- 7) perform personal hygiene and self care;
- 8) manage personal medication.

The ministry argues that while the appellant meets the age criterion, her physician has not confirmed her impairment will last more than 2 years. Furthermore, the ministry is not satisfied the appellant has a severe physical impairment because there is no information submitted from a prescribed professional (PP) to address this. With regard to mental impairment, the ministry argues that the information provided on the PWD application, which indicates only minimal or no impact on functioning. Therefore the ministry concludes the appellant does not have a severe mental impairment. The ministry further argues that the PP has not confirmed that the appellant has an impairment that directly and significantly restricts her ability to perform DLAs because other than basic housekeeping, mobility outside the house and daily shopping, no other activities are reported as restricted. The ministry also argues that although the appellant uses a cane, the information on the PWD application does not establish that the appellant requires significant help with DLAs that are directly and significantly restricted. The ministry then concludes by arguing the appellant has met only one of the 5 criteria necessary to be designated PWD.

The appellant argues that her medical practitioner, in the PR of the PWD application, indeed has confirmed her impairment is likely to last more than two years. The appellant also argues that her physician's letter of January 22, 2010 addresses the other three criteria. The physician states that

the appellant has a severe physical impairment that significantly restricts her ability to do most daily living activities and that she requires significant help to perform DLAs.

The panel finds that on the Physician's Report section of the PWD application the appellant's medical practitioner has confirmed her impairment is likely to continue for at least two years.

The panel places considerable weight on the physician's January evidence, which quite directly and succinctly addresses the extent of the physical impairment and the need for personal support. This evidence is supported by the oral evidence at hearing of the appellant and the witness with regard to these factors. Based on the physician's letter and the oral evidence, the panel finds the appellant does have a severe physical impairment, that the impairment significantly restricts her ability to perform DLAs and that she requires significant help to perform those DLAs. The appellant therefore meets all 5 criteria to be designated with PWD status.

The ministry's reconsideration decision was not reasonably supported by all the evidence and the panel rescinds that decision.