

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated 2010 January 20 which denied the appellant's request to be designated as a Person With Disabilities (PWD). The decision states that the appellant must meet five criteria as set out in the legislation. The ministry is not satisfied that the appellant meets all the criteria. Specifically, the ministry found that:

- the appellant is at least 18 years old
- a physician confirms that the appellant's impairment is likely to continue for at least two years
- the ministry is satisfied that the appellant has a severe physical or mental impairment

The ministry's decision also states that:

- the appellant's prescribed professionals do not confirm that the appellant's impairment directly or significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.
- the appellant's prescribed professionals do not confirm that, as a result of restrictions, she requires help to perform his daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Act (EAPWDA), Section 2 and 3
Employment and Assistance For Persons With Disabilities Regulation (EAPWDR), Section 2

PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the ministry at Reconsideration was:

- the appellant's Request for Reconsideration application dated Dec 14/09 including dictionary definitions of "severe" and extracts from Hudson vs Employment Appeal Tribunal
- a ministry document titled Persons With Disability Summary
- a fax from the Canadian Mental Health Assoc. dated 12/21/2009
- the appellant's Persons With Disabilities (PWD) application dated 2009 Aug 06

The ministry's Reconsideration Decision states that the appellant meets the age criterion, that the appellant's physician confirms that the condition is likely to last at least 2 years and that the ministry is satisfied that the appellant has a severe physical or mental impairment. The decision also states that the appellant's prescribed professional does not confirm that the appellant's impairment directly and significantly restricts her ability to perform daily living activities, noting that the appellant's physician indicates independent function with many daily living activities. The decision also states that the appellant's prescribed professional does not confirm that, as a result of direct and significant restrictions, the appellant requires help to perform daily living activities noting that:

- the appellant's physician does not report on how frequently or how long restrictions to personal self care, meal preparation, basic housework, daily shopping, use of transportation and management of finances occur
- the assessor met with the appellant for the first time in an office interview to complete the assessment form but the intent of EAPWDA Section 3 is to gather information from prescribed professionals with a history of contact and recent experience with the appellant
- the assessor's narrative does not support that periodic help with daily living activities is required from another person
- the assessor's narrative demonstrates that the appellant is able to function socially as she has obtained counselling and is now safe.

The appellant's witness advised she was the prescribed professional who had completed the Assessor's Report in the appellant's PWD application. She advised the panel that she was a psychiatric nurse with over 35 years of experience of working with peoples with anxiety and depression. She advised the panel that she had completed many PWD assessments and explained her procedure in conducting an assessment:

- she conducts a full medical, psycho-social assessment which typically takes about 1 to 1.5 hours
- she performs PWD assessments only for individuals that she does not treat as she needs to be neutral and maintain objectivity
- she reviews clinical records before meeting the individual
- she verifies that information provided to her in her meeting with the individual is

consistent with the clinical records

With respect to her assessment of the appellant she advised the panel that the appellant:

- is severely anxious and depressed and has a severe mental impairment
- can hardly communicate her needs
- takes counselling to keep from killing herself
- is restricted in performing all of her daily living activities continuously or periodically for extended periods of time
- needs daily assistance for all of her daily living activities.

The assessor explained that the nature of the appellant's condition is so severe that she cannot function for long periods of time without assistance from another person.

The appellant's representative provided a written submission to the panel and discussed same. She advised the panel that the ministry's Reconsideration Decision was unreasonable because:

- it contravenes the Hudson decision as:
 - it does not resolve ambiguity in favour of the appellant
 - only two activities need to be restricted
 - that the appellant's self report should be given significant weight
 - there is a lack of benevolent purpose in the decision
- the appellant has significant difficulties in making decisions about personal activities, care or finances
- the appellant is impaired in some way, in some activity, all the time

The ministry told the panel that the appellant's PWD application does not indicate that the impairment significantly restricts her daily living activities and that the ministry did not have the clarification that the witness provided.

The panel concluded that the evidence is as follows:

- the appellant's physician has stated that depression profoundly decreases the appellant's motivation and her anxiety is keeping her from functioning
- the assessor completed a professional PWD assessment
- the assessor's report states that
 - the appellant has great difficulty with all daily living activities
 - she needs periodic assistance from another person for walking outdoors, climbing stairs, standing, lifting, carrying and holding
 - the appellant's mental impairment has a major impact on her bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, executive functions, memory, motivation, motor activity, language, and other neuropsychological problems
 - the appellant needs periodic assistance in dressing, grooming, bathing, feeding herself, regulating her diet, laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices and carrying purchases home, meal planning, food preparation, cooking, food storage, banking, filling prescriptions and using transit.
 - the appellant needs periodic support/supervision in making appropriate social decisions, developing and maintaining relationships, interacting appropriately with



others, dealing with unexpected demands and securing assistance from others.

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the Ministry's decision to deny the appellant's request for PWD designation.

The relevant legislation is the EAPWDA, Section 2 and EAPWDR Section 2. EAPWDA, Section 2 states that the minister may designate a person who has reached 18 years of age PWD if 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 continuously, or periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

Section 2 (3) states that

- (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.

EAPWDR Section 2 states:

- (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.
- (2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of
 - (a) medical practitioner,
 - (b) registered psychologist,
 - (c) registered nurse or registered psychiatric nurse,
 - (d) occupational therapist,
 - (e) physical therapist,
 - (f) social worker,
 - (g) chiropractor, or

(h) nurse practitioner.

The ministry confirms that the appellant meets the age criterion and that the impairment is likely to last at least 2 years and that the appellant has a severe physical or mental impairment. The ministry's position is that the appellant's prescribed professional does not confirm that the appellant's impairment directly or significantly restricts her ability to perform daily living activities, and the appellant's prescribed professional does not confirm that, as a result of direct and significant restrictions, the appellant requires help to perform daily living activities .

The appellant's position is that the ministry's decision is unreasonable because:

- it contravenes the Hudson decision
- the appellant has significant difficulties in making decisions about personal activities, care or finances
- the appellant is impaired in some way, in some activity, all the time.

The panel determined that there is no legislative requirement for the prescribed professional to have a history of contact and recent experience with the appellant as opined in the ministry's decision. The panel concluded that the assessor conducted her assessment professionally and as such it should not be discounted. The panel noted the evidence that the appellant's prescribed professional confirmed a long list of daily living activities that the appellant has difficulty performing. These activities include preparing meals, managing finances, shopping, using transportation, housework, moving indoors and outdoors, personal hygiene and managing medication as prescribed in EAPWDR Section 2(1)(a). These activities also include making decisions about personal activities, care or finances and interacting with others as prescribed in EAPWDR Section 2(1)(b). The panel thus concluded that the appellant's impairment directly and significantly restricts her ability to perform daily living activities periodically for extended periods. The panel also noted the prescribed professional's evidence that the appellant needs periodic assistance in personal care, basic housekeeping, shopping, meals, filling prescriptions and using transit and the panel concluded that the appellant requires the significant help or supervision of another person to perform her daily living activities. The panel concluded the provisions of EAPWDA, Section 2 have been met.

Accordingly, the panel finds that the ministry's decision is not reasonably supported by the evidence and the panel rescinds the ministry's decision.