

PART C – Decision under Appeal

In a reconsideration decision dated 03 March 2011, the Ministry denied the Appellant a Person with Disabilities (PWD) designation because they concluded she did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that her impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because they determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict her ability to perform daily living activities (dla) and she does not require significant help or supervision of another person 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 PWD designation application,
- a submission dated 11 February 2011 from the Appellant's representative (Advocate),
- a letter from a hearing rehabilitation counselor dated 25 January 2011,
- a letter of diagnosis dated July 8, 2010 from an eye care clinic,
- a prescription note stating symptoms of celiac,
- pictures of the Appellant's left leg,
- a letter dated June 21, 2010 from the Appellant's friend,
- a letter dated July 4, 2010 from the Appellant's son,
- a letter dated July 4, 2010 from the Appellant's daughter-in-law,
- a letter dated July 1, 2010 from the Appellant.

The Appellant writes in her letter dated July 1, 2010 that she is applying for Persons with Disabilities (PWD) status because of her eyesight, hearing, diverticulitis in her left leg and being celiac. She adds that she is separated from her husband and relies on her son and daughter-in-law for help. She states she has about 10% hearing capacity and must read lips. Also her eyesight has worsened and she can no longer drive, read print finer than 20 point font and is finding it harder to read lips. She writes her son drives her wherever she needs to go and relies on her daughter-in-law for help in personal care matters.

The Appellant also writes she has cellulitis in her left leg and is prone to migraines. She says her son and wife do grocery shopping, cooking meals, cleaning and running errands for her. She states she uses a hospital bed, a cane and a scooter that are helpful to her. She states some days she needs assistance going to the washroom and climbing stairs. She states that she has begun a gluten and dairy free diet but has not been tested for a celiac.

The letter from the Appellant's son confirms he drives his mother where necessary and does all her errands. He states that the Appellant suffers from migraines a lot and her eyesight and hearing is worsening. He states that she lives in the basement of his home with her own bedroom and bathroom.

The letter from the Appellant's daughter-in-law states she helps the Appellant by doing the housework and cooking meals when the Appellant has a migraine or her leg is sore.

The letter from the Appellant's friend states she has known the Appellant since 2005 and is aware that the Appellant has limited vision, is hard of hearing, suffers from frequent migraines, has a chronic chest condition and food allergies, is subject to bladder and yeast infections, and has a long term problem with her left leg. She concludes that the Appellant cannot work due to the combination of all these problems.

The physician's section of the PWD application is completed by the Appellant's general practitioner (GP). In it, the Appellant is diagnosed with deafness. The health history is blank. The GP states The Appellant has no prescribed medication or treatments interfere with the Appellant's ability to perform her daily living activities (dla) and the Appellant needs no aids for her impairment. He does confirm the Appellant's impairment will continue for 2 or more years. Under functional skills, the MP reports

the Appellant can walk unaided 4+ blocks, climb unaided 5+ steps, is limited to lifting 7 - 16 kg. and has no limitation on remaining seated. The GP reports no deficits in cognitive and emotional functions. Under dla the MP states the impairment does not restrict the Appellant's ability to perform dla.

The assessor's section of the PWD application is completed by the same GP. In it, the GP states the Appellant lives alone. Under ability to communicate the GP grades the Appellant's hearing as poor and reading, writing and speaking as good. Under mobility and physical ability, the GP states the Appellant is independent in all functions.

Under cognitive and emotional functioning, the GP reports no impact in all 14 functions. Under dla, the GP reports independent in all functions. Under assistance the GP acknowledges the Appellant's son provides assistance. The GP acknowledges no assistive devices.

In the Advocate's submission dated 11 February 2011, the Advocate argues the Appellant suffers from severe hearing and vision loss. The Advocate states the Appellant also suffers from celiac disease, diverticulosis, cellulitis, migraines, anxiety and depression. The Advocate also argues the GP did not ask any questions of the Appellant when completing the PWD application, rushed through the completion, and erred in areas of the application and therefore it lacks pertinent information. The Advocate argues each of the Appellant's medical conditions cause significant difficulties and combined they present severe challenges for the Appellant on an ongoing basis and she is fortunate to have the continuous daily assistance of her son and his family to help here with her dla.

At the hearing, the Advocate questioned 2 witnesses, the Appellant's son and the Appellant's friend. The Ministry did not object to the oral evidence from the witnesses. The Panel found the oral evidence from both witnesses supported the information in front of the Ministry at the time of the reconsideration decision and accepted it under EAA, Section 22(4)(b).

The Appellant's son states his mother has given up her license due to her lack of depth perception and he drives her to all appointments and errands. He states he also helps her by doing some shopping and acts as her "second set of ears" while at appointments. He says he does all the heavy lifting for the Appellant, acts as a her "technician" in her apartment and helps in food preparation by doing the food chopping. He states he or his wife also helps to clean the Appellant's bathroom. He says he sees the Appellant every day of every couple days and is "on call" through out the day. The son confirmed the Appellant is no longer living with him but is in a new apartment.

The Appellant's friend stated he has known the Appellant for 6 years and lives in the same apartment building that is specialized for the elderly and disabled. He believes the Appellant's condition is severe and prolonged and has helped her find support groups for the hearing and seeing disabled. He believes the Appellant wishes to remain independent and that she will only be able to do so if she has the right support groups around her.

The Appellant stated that when completing the PWD application, the GP did not ask her any questions regarding her dla. She also stated she wasn't sure how aware the GP was of her other impairments.

At the hearing the Ministry read from a written submission which reviewed the applicable legislation

and stated the information submitted by the GP , the letter from the audiologist and audiogram and support letters from her son, daughter-in-law and friend do not provide details to establish a severe impairment or a significant impact to activities of daily living.

The Panel finds:

- The Appellant is a recipient of income assistance was living with her son and daughter-in-law at the time of the reconsideration decision and now living alone in an apartment.
- The Appellant is diagnosed by a medical practitioner as deaf, an impairment that will continue for more than 2 years.
- The Appellant has 20/40 eyesight and limited reading vision.
- The Appellant has celiac symptoms confirmed by a GP.
- The Appellant relies on her son and daughter-in-law for transportation and some communication help, food preparation and house keeping.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant a PWD designation based on the Appellant not meeting 3 of the 5 necessary statutory requirements for PWD designation. The Ministry found the information submitted did not establish that the Appellant had a severe mental or physical impairment, and the impairment does not directly and significantly restrict her ability to perform daily living activities and she does not require significant help or supervision to another person to perform daily living activities.

The criteria for PWD designation is set out in EAPWDA, Section 2 as follows:

2 (1) *In this section:*

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"health professional" repealed

"prescribed professional" has the prescribed meaning;

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that 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

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(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.

(4) The minister may rescind a designation under subsection (2)

The definition of daily living activities is set out in ERAPWDR, Section 2 as follows:

2 (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 Minister argues a severe physical or mental impairment has not been established because the Appellant is able to walk up to 4+ blocks, to climb 5+ steps and to lift up to 16 kilograms and can remain seated. The Ministry determined the information does not indicate a severe physical impairment. The Ministry argues a severe mental impairment has not been established because the GP determined no deficits in cognitive and emotional functions.

The Advocate argues the GP erred in the PWD application and concludes the Appellant has a severe physical impairment when her hearing loss, eyesight loss, celiac disease, diverticulosis, cellulitis, migraines anxiety and depression are combined.

The GP diagnosed the Appellant with deafness, and the degree of loss is supported by the audiologist report and the Appellant's description of her hearing ability at an 80 % loss. The Panel finds the Ministry did not make a reasonable determination because the information establishes the Appellant has a severe physical impairment, that is, a significant hearing loss. The Panel finds the Appellant's other physical ailments, that is, eyesight loss, possible celiac disease, a leg condition and migraines are not substantiated as severe by any medical diagnosis in the information provided.

The Panel finds the Ministry made a reasonable decision that the Appellant does not have a severe mental impairment because although the Appellant complains of depression, there are no medical reports or diagnosis submitted that substantiate the severity of her depression.

The Ministry argues the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities because in the opinion of a prescribed professional, that is the information from the GP reports the Appellant's dla are unrestricted.

The Appellant argues she is restricted in climbing stairs, the ability to do housework, meal preparation and transportation for daily errands.

The GP states the Appellant's impairment does not restrict the Appellant's ability to perform dla, although the Appellant and her family state she cannot perform housework, meal preparation and daily errands when she has a migraine or when her leg bothers her and the friend states the Appellant needs support groups to function. The legislation requires that the dla must be restricted in the opinion of a prescribed professional and in this case the prescribed professional, acting as the physician and the assessor, did not confirm the impairment had a significant or direct restriction on the Appellant's dla. The Panel finds the Ministry made a reasonable decision that the Appellant's impairment does not directly and significantly restrict her dla based on the information before them.

The Ministry argues the Appellant does not require significant help to perform dla because it has not been established that the dla are significantly restricted. The Appellant argues she depends on her son and daughter-in-law to cope with her dla.

The GP reports independent functioning of the Appellant's dla. The son states he sees the Appellant every day or every couple days to supply transportation, food preparation or aid in communication. The Appellant's friend orally stated the Appellant is independent and can remain so with the right kind of support systems. The Panel finds the Ministry made a reasonable decision that the Appellant does

not require significant help of another person to perform her dla.

The Panel finds the Ministry made a reasonable decision to deny the Appellant a PWD designation because the Appellant did not meet all the legislated requirements for designation as a PWD. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.