

## PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration decision dated January 11, 2011 which denies the appellant's request for Persons with Disabilities (PWD) designation. The ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires help or supervision of another person to perform the daily living activities restricted by the impairment.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2  
EAPWD Regulation (EAPWDR), section 2

**PART E – Summary of Facts**

The evidence before the ministry at reconsideration included the appellant's PWD application which included a physician's report dated August 16, 2010, and an assessor's report dated August 16, 2010.

The physician's report indicates that he has been the appellant's doctor for seven years. He diagnoses the appellant with degenerative disc disease, spinal stenosis, and depression. The physician notes that the main issue is significant lower back [pain] due to DDD; spinal stenosis. He states that the condition is non-operative. The physician adds that the appellant is in constant pain and is limited in her walking and sitting. He notes that she tries to be as independent as possible but needs help with household chores, lifting etc. He adds that she also suffers from depression but has had good results with medications for this. The medications do not interfere with her ability to perform daily living activities, and the appellant requires no prostheses or aids for her impairment.

The physician adds that her impairment is lifelong and likely to deteriorate over time, and there is no remedial treatment.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 1 - 2 blocks, can climb 2- 5 steps, can lift 5 to 15 lbs, and can remain seated for less than 1 hour.

The physician notes that the appellant has no difficulties with English communication.

In terms of whether the appellant suffers from any significant deficits with his cognitive and emotional function, the physician indicates that the appellant suffers from emotional disturbance (depression).

The same physician also completed the assessor's report wherein he indicates that the appellant lives with her mother, has DDD, spinal stenosis and depression. In terms of her mobility and physical ability, the assessor notes that the appellant is independent walking indoors and standing, that she requires periodic assistance with lifting and carrying, and that she takes significantly longer walking outdoors and climbing stairs. With these latter two activities, he states that she usually has to rest frequently, and that she tries to be very careful on stairs.

Under Part B, the physician comments on the appellant's mental or physical impairment and how it impacts on her daily functioning. With the exception of bodily functions and emotions which are moderately impacted, the appellant faces no impact on the other twelve aspects of daily functioning.

Under Part C, the assessor indicates that the appellant is independent in 25 of 28 identified aspects of daily living activities. Specifically, the assessor indicates that the appellant is independent in all areas of personal care, most areas of shopping (except carrying purchases home where she requires continuous assistance and help with anything over 15 lbs), all aspects of meals, all aspects of paying rent/bills, all aspects of medication, and all aspects of transportation. With respect to transportation, the assessor adds the comments that the appellant cannot sit for prolonged periods without getting up.

With regard to her basic housekeeping, the assessor indicates that appellant takes significantly longer and requires frequent rests and help from others. The assessor does not indicate how much longer it takes the appellant to do these tasks.

With respect to the daily living aspects of social functioning, the assessor indicates that the appellant functions independently in all areas, and that she has good social functioning with her immediate and extended social networks.

In Part D, the assessor notes that the appellant requires help for daily living activities from family and friends, and that the appellant does not use any assistance devices and/or assistive animals.

Neither the appellant nor the ministry provided any further submissions on appeal.

**PART F – Reasons for Panel Decision**

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible for a PWD designation because the appellant did not meet the following criteria:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires help or supervision of another person to perform the daily living activities restricted by the impairment.

Section 2(2) of the EAPWD Act provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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.

Section 2 of the Regulations states 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.

[am. B.C. Reg. 196/2007.]

The ministry agrees that the appellant has met the age requirement and the medical practitioner has confirmed the impairments are likely to continue for at least 2 years. However, the ministry argues that the evidence falls short of proving that:

- the appellant has a severe physical or mental impairment;
- the information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- the prescribed professional does not indicate that the appellant requires help or supervision of another person to perform the daily living activities restricted by the impairment.

The appellant contends that she requires PWD because her condition is getting worse. She says there are some things that she can do and some things that she cannot. It is her position that she should be eligible for PWD status.

In response, the ministry says that the physician and assessor's reports both confirm that, although the appellant has physical impairments, her impairments are not severe, and she is not significantly restricted in her daily living activities to the extent that she requires periodic or significant help or supervision.

With respect to whether or not the appellant suffers from a severe physical impairment, the panel has considered the comments in the physician's report and the assessor's, and in particular the indications in the reports that the appellant's impairments have no impact on most aspects of her daily living. For instance, in Part B of the assessor's report the assessor indicates that only the appellant's bodily functions and emotion are affected by her impairments. In Part C, the assessor indicates that the appellant is independent in 25 of 28 aspects of daily living, namely personal care, shopping, all aspects of meals, all aspects of paying rent/bills, all aspects of medications, and all aspects of transportation. The assessor makes these findings notwithstanding the appellant's impairments and noted chronic pain. Considering these findings, the panel finds that it was reasonable for the ministry to conclude that the appellant's physical impairments are not severe.

With respect to whether the appellant suffers from a severe mental impairment, the panel considered the evidence of the physician that the appellant suffers from depression and emotional disturbance. However, the panel also considered what the assessor had to say about the appellant's social functioning, namely that she functions independently and has good functioning of her immediate and extended social networks. Given this evidence, the panel finds that the ministry's decision is reasonable in so far as it concludes that the appellant does not suffer from severe mental impairments.

The panel next considered the physician and assessor's report in terms of how the appellant's impairments affect her daily living. The physician notes that the appellant can walk 1 - 2 blocks, can climb 2 - 5 steps, can lift 5 to 15 lbs, and can remain seated for less than 1 hour. The assessor's report indicates that wherein the appellant is independent in 25 of 28 identified aspects of daily living activities. Specifically, the assessor indicates that the appellant is independent in all areas of personal care, most areas of shopping (except carrying purchases home), all aspects of meals, all aspects of paying rent/bills, all aspects of medication, and all aspects of transportation. With respect to transportation, the assessor adds the comments that the appellant cannot sit for prolonged periods without getting up.

With regard to her basic housekeeping, the assessor indicates that appellant takes significantly longer and requires frequent rests and help from others. The assessor does not indicate how much longer it takes the appellant to do these tasks.

Despite the appellant's impairments and discomfort, both reports suggest that the appellant is still independent in the all areas of daily living with the only exception being in the areas of basic housekeeping (which takes her significantly longer) and carrying purchases home (where she requires continuous assistance).

In summary, although the appellant may face ongoing discomfort and restrictions as a result of her physical impairments, the physician indicates that the appellant still has the ongoing ability to function independently in virtually all aspects of her daily living. Further, although the physician has noted that

the appellant does at times require assistance, the physician has noted that such assistance is limited to carrying purchases home and to the areas of basic housekeeping.

In the absence of such further information suggesting "significant" restrictions, the panel finds that the ministry's decision is reasonable in so far as it concludes that the impairments do not directly and significantly restrict the appellant's ability to perform daily living activities continuously or periodically for extended periods.

With regard to the kind of assistance the appellant requires, the panel again references the information from the physician that the appellant requires continuous assistance only for carrying groceries, and that she also requires assistance for basic housekeeping. The assessor has not noted the amount or duration of assistance required for basic housekeeping. Taking this evidence into account, the panel concludes that the ministry's decision is reasonable in so far as it concludes that any help the appellant requires from another person is not "significant" as required by the legislated criteria.

In summary, the panel finds that the ministry reasonably determined that the appellant does not suffer from severe physical or mental impairments. Further, neither the physician nor the assessor have provided any information to confirm that the appellant's restrictions directly and significantly restrict her ability to perform daily living activities as required by the legislation, nor has the physician or assessor provided any information to suggest that the appellant requires significant help or supervision of another person to perform the daily living activities restricted by the impairment.

As such, the appellant has not met all of the legislated criteria in order to be eligible for PWD status.

The panel therefore concludes that the ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.