

**PART C – Decision under Appeal**

The decision under appeal is the ministry's Reconsideration decision dated December 22, 2010 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 under section 2 of the EAPWD Act and Regulation:

- 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 (EAPWD) Act, section 2  
EAPWD Regulation, 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 which appears to be dated August 27, 2010, and an assessor's report which appears to be dated August 22, 2010 (the exact dates on both reports are somewhat unclear).

The physician's report indicates that he has been the appellant's doctor for the last 10 years. He diagnoses the appellant with COPD, osteoarthritis and degenerative disc disease, and anxiety. In his additional comments, the physician notes that the appellant experiences constant fatigue, constant pain, constant shortness of breath and chronic cough. The physician notes that the medical problems are likely to continue for two years or more, and that they can only be managed not cured.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 2 – 4 blocks, can climb 5+ steps, can lift up to 5 lbs, and can remain seated for 1 – 2 hours.

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

In terms of whether the appellant suffers from any significant deficits with her cognitive and emotional function, the physician again indicates that the appellant suffers from anxiety.

The same physician also completed the assessor's report. Under Part B, the physician comments on the appellant's mental or physical impairment and the impact it has on her daily functioning. The physician explains that the appellant experiences continuous pain, feels inadequate, and self conscious. The physician adds that, for the most part, the impairments have no impact on the appellant's cognitive and emotional functioning. However, the physician indicates that the appellant's emotions moderately impact her daily functioning and that her attention and motivation levels are minimally impacting her daily functioning.

Under Part C, the assessor indicates that the appellant is independent in 23 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, most aspects of meals, all aspects of paying rent/bills, all aspects of medication, and all aspects of transportation.

With regard to the basic housekeeping and laundry, the assessor indicates that the appellant requires periodic assistance from her husband.

With regard to shopping, the assessor indicates that the appellant requires periodic assistance from her husband with going to/from stores and carrying purchases home.

With regard to meals, the physician indicates that the appellant require periodic assistance with cooking.

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

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

On appeal, the appellant submitted new evidence which included an updated physician's report dated February 13, 2011 and an updated assessor's report dated February 13, 2011. Both reports have again been completed by the same physician.

In the physician's new report he diagnoses the appellant additionally with a digestive disorder, namely reflux and duodenitis. He adds, under Part B, that the appellant has reduced range of mobility. Under Part D, the physician notes that the appellant now suffers also in the area of motivation and attention or sustained concentration. He adds the additional comment that her condition has deteriorated significantly over the last year.

In the updated assessor's report, the assessor indicates under Part B that the appellant now also suffers from epigastric pain.

Under Part B, he notes that almost all of the appellant's mental or physical impairments are affected on some level. For instance, he notes that her impairments now have a major impact on her motivation level. He further indicates that her impairments now moderately impact her bodily functions, emotion, attention/concentration, executive functions, memory, language, and other emotional or mental problems. He indicates that the appellant faces minimal impacts with her consciousness and motor activity.

With respect to her daily living activities, the assessor indicates a significant change in the appellant's overall ability to manage. He indicates that the appellant is now independent only in the area of feeding, and paying for purchases. He indicates further that the appellant requires periodic assistance with bathing and regulating her diet, reading prices and labels, making appropriate shopping choices, meal planning, safe storage, all aspects of paying rent and bills, all aspects of medications, and using transit. The assessor indicates that the appellant now requires continuous assistance with all aspects of basic housekeeping, going to/from stores, carrying purchases home, food preparation and cooking.

The assessor also indicates that the following daily living activities now take the appellant significantly longer: dressing, grooming, toileting, both forms of transfers, and all aspects of transportation. The assessor indicates that it takes the appellant four times longer than usual to do these tasks.

Under Part C, the assessor indicates that the appellant now functions at a marginal level for both her immediate and extended social networks, that she requires help from her husband and others, that she may benefit from a bath bar, and that the appellant now relies on toileting aids and bathing aids.

In his final comments, the assessor indicates that the appellant's impairments have deteriorated significantly, that her weight is down, that she suffers from poor appetite, and that she has had multiple cortisone injections for pain. The assessor indicates that he obtained his information from an office interview with the appellant, from a review of her file/chart information, and from the appellant's health advocate.

The appellant also provided her medical imaging records, prescription summaries, and a written statement from her former employer indicating that the appellant is no longer able to house clean due to her pain and suffering.

At the oral hearing, the appellant, made the following submissions:

- She was not present with her physician when he completed the report.
- She did not go to see the physician for every ache and pain.
- The physician did not know anything about the appellant's use of a bath chair, hand held shower, railing and lifted toilet seat.
- She has a neighbor and a family member assist her with her daily living activities.
- Her husband does all of the meal preparation and shopping, and he helps with laundry and housework.
- She does the odd dusting but it takes significantly longer.
- She wears loose fitting clothes so that she doesn't have to raise her arms.
- She manages with her transportation but it takes her a little longer.
- She faces restrictions with lifting.
- She avoids stairs, and gets sore if she stands too long.
- She cannot go a full day without rest.
- She has to avoid some medications because they give her a foggy head.
- As a result of her impairments, her concentration and memory are affected and she has no motivation.
- Before handing in the original physician report to her physician for completion, she went through it on her own and checked off various boxes. In particular she completed page 11 of 23 of the original physician's report and pages 17 through 23 of the original assessor's report. Once she checked things off, she brought the report to her physician for his completion. She did this to facilitate and expedite the process. However, in hindsight she says that she minimized her conditions at the time and that she was confused by the application. She contends that she should have sat down with her physician and explained to him how she actually felt at the time.
- She disagrees with the ministry's decision that both her physical and mental impairments are not severe.

The ministry opposes the admission of new evidence (namely the updated physician's report and the updated assessor's report) and says that this new evidence is akin to a new PWD application. The ministry argues that approximately 70% of the content of these two reports is new information and significantly altered from the original reports written in August 2010. The ministry contends that the purpose of this appeal is to address the information that was before the ministry at the time of reconsideration, and that the new evidence ought to be adjudicated upon on its own face by the Health Assistance Branch and not on this appeal.

Part 3 of the Employment and Assistance Act, and in particular section 22(4) allows the panel to admit as evidence only the information and records that were before the minister when the decision being appealed was made. The panel can also consider any new evidence that is in support of the

information and records that were before the ministry when the reconsideration decision was made. The question therefore arises as to whether the new physician's report and the new assessor's report is evidence in support of the information and records that were before the ministry when the reconsideration was made. The panel finds that it is not.

The new information provided by the appellant includes a new diagnosis (namely, a digestive disorder) and new symptoms including reduced range of mobility. The physician comments on various new symptoms and medical conditions which the appellant has experienced due to deterioration in her health over the last year. Although some of the evidence overlaps the evidence provided by the physician in August 2010, a substantial part of the evidence is completely different from what the physician stated in his August 2010 reports. Further, the changes noted by the physician reflect the appellant's condition at the time of the reports, and not her condition back in August 2010.

Through her new evidence the appellant is essentially submitting a new PWD application. The panel does not have jurisdiction to consider a new PWD application, and can only consider new evidence if it is evidence in support of the original information and records that were before the ministry at the time of reconsideration. As the new information is not in support of the original information and records that were before the ministry at the time of reconsideration, the panel does not admit the new information as evidence before this 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 under section 2 of the EAPWD Act and Regulation 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 Regulation 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 appellant argues that she does have severe physical and mental impairments which significantly restrict her ability to perform various daily living activities, and as such she has met all of the legislative criteria for PWD status. She argues that she is restricted in her ability to do household chores (she cannot vacuum, wash pots, do windows). She says that on some days she is unable to get dressed, that she is in constant pain, and that this causes her to become very depressed and frustrated to the point where she doesn't want to speak or socialize with people. She says that her condition has significantly worsened since 2002, and that she now has five crumbled discs in her neck. She says that she is holding off on surgery at the advice of her doctor but that surgery will likely result in the future.

In response, the ministry says that both the physician's report and assessor's report 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 her impairments directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.

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 that the appellant suffers from "constant fatigue, constant pain, constant shortness of breath...chronic cough". The panel also considered the physician's comment that the medical problem can only be managed and not cured.

However, the panel also considered the evidence in the physician's report that the appellant can walk 2 – 4 blocks, can climb 5+ steps, can lift up to 5 lbs, and can remain seated for 1 – 2 hours. Further the panel noted the evidence in the assessor's report that the appellant is independent in 23 of 28 aspects of daily living. Significantly, the information provided by the physician mirrors the self report that the appellant made of herself when she checked off various sections of these reports prior to handing them to her physician for his completion.

Given the evidence, the panel finds that it was reasonable for the ministry to conclude that the appellant's physical impairments are not severe.

With respect to the existence of a severe mental impairment, the panel notes the evidence in the physician's report that the appellant suffers only from anxiety. The panel also notes the findings from Part B of the assessor's report wherein the physician comments on the appellant's mental or physical impairment and the impact it has on her daily functioning. The physician explains that the appellant experiences continuous pain, feels inadequate, and self conscious. The physician adds that, for the most part however, the impairments have no impact on the appellant's cognitive and emotional functioning. The physician further indicates that the appellant's emotions only moderately impact her daily functioning and that her attention and motivation levels are minimally impacting her daily functioning.

Given this evidence, the panel finds that the ministry's decision is also 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 2 – 4 blocks, can climb 5+ steps, can lift up to 5 lbs, and can remain seated for 1 – 2 hours.

As noted above, the assessor's report also indicates that the appellant is independent in 23 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, most aspects of meals, all aspects of paying rent/bills, all aspects of medication, and all aspects of transportation.

With regard to the basic housekeeping, the assessor indicates that the appellant requires periodic assistance from her husband.

With regard to shopping, the assessor indicates that the appellant requires periodic assistance from her husband with going to/from stores and carrying purchases home.

With regard to meals, the physician indicates that the appellant require periodic assistance with cooking.

Despite the appellant's impairments and discomfort, both reports suggest that the appellant is still independent in most areas of daily living with the only exceptions being in the areas of basic housekeeping, shopping and meals.

In summary, although the appellant no doubt faces ongoing discomfort and restrictions as a result of her ongoing physical impairments, the physician indicates that the appellant still has the ongoing ability to function independently in most areas of her daily living activities. Further, although the physician has noted that the appellant does at times require assistance, the physician has noted that such assistance is periodic only with no indication as to the amount of time.

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

With regard to the kind of assistance the appellant requires, the panel again references the information from the physician that the appellant requires only periodic assistance for carrying groceries, basic housekeeping and meals of unspecified frequency and duration. 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 is periodic at best, and 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. The appellant may face difficulty and discomfort in her ability to manage certain aspects of her daily living activities. Notwithstanding her restrictions, however, neither the physician nor the assessor have provided any information to confirm that, at the time of reconsideration, the appellant's restrictions directly and significantly restricted her ability to perform daily living activities as required by the legislation, nor has the physician 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.

The ministry reasonably determined that 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.