

## PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated February 3, 2011, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The decision stated that the Appellant did not meet 3 of the 5 statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a PWD. The ministry found that the Appellant met the age requirement and that her impairment is likely to continue for at least 2 years. The ministry determined that:

- the information before the Ministry at reconsideration did not establish that the Appellant has a severe physical and/or mental impairment;
- the information before the Ministry at reconsideration did not establish that the Appellant's impairment in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities (DLAs) either continuously or periodically for extended periods; and,
- The information did not establish that to perform directly and significantly restricted DLA's the Appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

## 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

Information before the Ministry at Reconsideration included:

- The Ministry's Persons with Disabilities Designation Decision Summary, date November 18, 2010.
- The Appellant's Persons with Disabilities Designation Application, stamped as received by the Ministry September 22, 2010.
- The Appellant's Request for Reconsideration, dated December 19, 2010.
- A copy of page 11 of 23, Section E of the Physician Report section of the Appellant's Persons with Disabilities Designation Application, with all listed activities reported as not restricted, with a note in the physician's hand stating "Misread the page and filled out wrong", with the physician's signature.

At the hearing, the Appellant stated that she has bars to assist in getting in and out of the bath. She stated that her daily living activities are done very slowly or not at all due to pain.

In the PWD application, the Appellant's physician reported that she is diagnosed with complex regional pain syndrome and depression. The physician reported that the Appellant can walk 4+ blocks, climb 5+ steps, lift 15 to 35 pounds and has no limitation sitting. The physician reported a significant deficit with cognitive and emotional function with motivation. With respect to DLA's, the physician initially reported that all of the listed activities are restricted, however he submitted a revised report when he was contacted by the Reconsideration Officer, reporting that all listed DLA's are not restricted. Acting as assessor, the physician reported that the Appellant has periodic restrictions lifting and carrying and holding, with a notation that she can lift up to 20 lbs and carry 20 lbs at a time. With respect to cognitive and emotional functioning, the physician reported that the Appellant has minimal impacts with emotion and motivation. All of the other aspects of daily living activities are reported as independent with the exception of carrying purchases home, which is reported to require periodic assistance. The physician reported all aspects of social functioning as being independent. With respect to a requirement for assistance, the physician reported that help is provided by family, with a note that while on pain meds does very well and pain is controlled. The physician reported that the Appellant uses hand rails as a bathing aid.

With respect to the Appellant's physical impairment the Panel's findings of fact are:

- The Appellant is diagnosed with complex regional pain syndrome and depression;
- The physician reported that the Appellant can walk 4+ blocks, climb 5+ steps, lift 15 to 35 pounds and has no limitation sitting;
- In his revised report, the physician reported that the Appellant is restricted in performing no DLA's;
- Acting as assessor, the Appellant's physician reported that she has periodic restrictions lifting and carrying and holding, with a notation that she can lift up to 20 lbs and carry 20 lbs at a time.

With respect to the Appellant's mental impairment the Panel's findings of fact are:

- The physician reported a significant deficit with cognitive and emotional function with motivation;
- Acting as assessor, the physician reported that the Appellant has minimal impacts with emotion and motivation;
- The physician reported all areas of social functioning as independent.

With respect to the Appellant's DLA restrictions, the Panel's findings of fact are:

- All aspects of daily living activities are reported as independent with the exception of carrying purchases home, which is reported to require periodic assistance.

With respect to the Appellant's requirement for help to perform DLA's, the panel's findings of fact are:

- The physician reported that the Appellant requires hand rails for the bath;
- The physician reported that the Appellant requires periodic assistance with lifting and carrying and holding.

## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a Person with Disabilities (PWD). The ministry determined that:

- the information before the Ministry at reconsideration did not establish that the Appellant has a severe physical and/or mental impairment;
- the information before the Ministry at reconsideration did not establish that the Appellant's impairment in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities (DLAs) either continuously or periodically for extended periods; and,
- The information did not establish that to perform directly and significantly restricted DLA's the Appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

### **EAPWDA:**

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;

**"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).

### **EAPWDR:**

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 Appellant's position is that she has pain and depression that cause periodic difficulties with daily living activities. On bad days she cannot do anything, and manages her DLA's a little at a time. She argued that she meets the requirements for designation as a person with disabilities.

The Ministry's position is that there is insufficient medical evidence to support a determination that the Appellant meets the criteria for designation as a PWD. The Appellant's physician has not provided sufficient information that she has a severe mental or physical impairment that significantly restricts her ability to perform DLA's continuously or periodically for extended periods, nor that she requires help to perform them.

With respect to a severe physical impairment, the Panel notes that the Appellant's physician has diagnosed her with complex regional pain syndrome, however he has indicated that she can walk 4+ blocks, climb 5+ steps, lift 15 to 35 pounds and has no limitation sitting. The physician reported no restrictions to daily living activities, and, acting as assessor, reported that the Appellant performs all of the other aspects of daily living activities independently, with the exception of carrying purchases home, which is reported to require periodic assistance. The Panel acknowledges the Appellant's self report in which she details her condition, however her physician, who has known her for two years, has reported one limitation to functional skills, lifting, and reported all aspects of DLA's as being performed independently except carrying purchases home. The Panel finds that the Ministry's determination that the Appellant does not have a severe physical impairment was reasonable.

With respect to a severe mental impairment, the Panel notes that the Appellant's physician has indicated a significant deficit with cognitive and emotional functioning, however only minimal impacts to cognitive and emotional functioning were reported. The physician reported all aspects of social functioning as being independent. The Panel finds that the Ministry's determination that the Appellant does not have a severe mental impairment was reasonable.

With respect to the Appellant's ability to perform daily living activities, the Appellant's physician reported that she is independent in performing all DLA's. Acting as assessor, the physician reported all aspects of daily living activities as independent with the exception of carrying purchases home. The Panel finds that the Ministry's determination that the Appellant's impairment does not significantly restrict her ability to perform DLA's either continuously or periodically for extended periods was reasonable.

With respect to the Appellant's requirement for help to perform DLA's, the Appellant's physician reported that she requires periodic assistance with carrying purchases home, and that she requires a hand rail for the bath. All other aspects of DLA's are reported to be performed independently. The Appellant is reported to use an assistive device, however the physician commented that while on pain medication, the Appellant does very well. The Panel finds that the Ministry's determination that the information does not establish that the Appellant requires significant help to perform DLA's was reasonable.

The Panel finds that the Ministry's decision to deny the Appellant's application for PWD designation was reasonably supported by the evidence. The Panel confirms the Ministry's decision.