

PART C – Decision under Appeal

In the Reconsideration Decision of September 6, 2011, the appellant was denied her request for a Persons with Disabilities (PWD) designation. The Employment and Assistance for Persons with Disabilities (EAPWD) Act, Section 2 lists five criteria that must be met in order for the ministry to grant this designation. The ministry found that the appellant failed to meet two of the five criteria, namely that, the ministry is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities set out in legislation and, as it has not been established that daily living activities are significantly restricted (criterion 4); therefore, it cannot be determined that significant help is required from other persons.

PART D – Relevant Legislation

The Employment and Assistance for Persons with Disabilities (EAPWD) Act, Section 2
The Employment and assistance for Persons with Disabilities (EAPWD) Regulation, Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included the following:

1. The appellant's Request for Reconsideration (RR) containing a Self Report, dated August 20, 2011.
2. A letter from the appellant's physician, dated August 12, 2011.
3. Physician's Report (PR), dated March 24, 2011.
4. Assessor Report (AR), dated April 7, 2011.

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

In the PR, the appellant is diagnosed with Lumbar Spinal Stenosis, requiring extensive surgical correction. The appellant's condition limits her ability to walk, stand and sit for any length of time. She is awaiting surgery that will require a recovery time of 6 to 9 months with medications and treatments required for 4 to 6 months. The physician states that the estimated duration of impairment depends upon the outcome of the surgery but that it is likely to continue for two years or more and that the appellant will always have problems with her back. The physician notes that the appellant will need assistance with meal preparation and household chores such as cleaning, after surgery. With regard to Part E of this report (Daily Living Activities) the physician writes that it should be disregarded as it is covered in the AR which was also completed by the physician.

In the AR, also completed by the appellant's physician, the following information is documented. All areas of the appellant's ability to communicate are listed as "good". With regard to "Mobility and Physical Ability", the appellant is independent at walking indoors, requires periodic assistance walking outdoors, climbing stairs and standing, and requires continuous assistance with lifting, carrying and holding. All daily living activities are listed as independent with the exception of laundry, going to and from stores and getting in and out of a vehicle as requiring periodic assistance and carrying purchases home as requiring continuous assistance.

In the physician's letter of August 12, 2011, the following information is documented. The appellant will require extensive instrumentation fusion of her lumbar spine from the T12 to the sacrum, limiting her lumbar function. The appellant's surgical recovery will be quite extensive and she will have some long term significant disability from the same.

In the appellant's self report in the RR, she states that pain has progressed since her last doctor's report and that after surgery she will have an approximate 20" steel rod in her back, reducing her ability to work, if at all. As well, she will be required to wear a body cast for up to one year after her operation. She notes that she is on 30 - 50 mg. of Oxycodone to even do minor tasks. She further notes that family and friends are assisting her with many daily living activities.

PART F – Reasons for Panel Decision

The issue in this case is whether the ministry was reasonable in its decision to deny the appellant PWD designation finding that the appellant failed to meet two of the five criteria for PWD designation, namely that, the ministry is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities set out in legislation and, as it has not been established that daily living activities are significantly restricted (criterion 4); therefore, it cannot be determined that significant help is required from other persons.

The EAPWD Act, Section 2 sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the person's ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires the significant help of another person or the services of an assistance animal or an assistive device to perform those activities.

The EAPWD Regulations, Section 2, defines "daily living activities" and "prescribed professional" as follows:

Daily living activities

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 ministry argues that while the appellant's physician notes in the PR that the appellant is continuously restricted with basic housework and daily shopping and periodically restricted with meal preparation and mobility outside the home, no explanation of "periodic" is provided. The ministry notes that all daily living activities in the AR are almost all listed as independent by the appellant's physician with the exception of laundry, going to and from stores and getting in and out of a vehicle requiring periodic assistance and carrying purchases home requiring continuous assistance. The ministry further notes that the physician does not describe the frequency or duration of the periodic assistance that the appellant requires. The ministry finds that it is unable to establish that the appellant has a severe impairment that significantly restricts her ability to perform daily living activities as set out in legislation and that, as it has not been established that daily living activities are significantly restricted; therefore, it cannot be determined that significant help is required from other persons. The ministry concludes that the appellant does not qualify for PWD designation.

The appellant argues that her pain has progressed and that she will have a 20" steel rod in her back after surgery and that she will be required to wear a body cast for up to one year after her operation. She states that she is already receiving assistance with some daily living activities, including outdoor work, vacuuming and laundry, from family and friends. She says that she is disabled and while the surgery will ease the pain, the steel rod will severely limit mobilization.

With regard to daily living activities, the Panel notes that the appellant's physician wrote to disregard the Daily Living Activities section of the PR, indicating that it is covered in the AR. In the AR, the Panel notes that the appellant's physician lists 22 out of 26 daily activities as being independently performed by the appellant with laundry, going to and from stores and getting in and out of a vehicle as requiring periodic assistance and only carrying purchases home as requiring continuous assistance. Further, the panel finds that much of the appellant's argument for PWD designation, as well as the physician's letter of Aug 12, 2011, appear to refer to the appellant's likely condition after the surgery, which has not yet taken place. The panel finds that the ministry was reasonable in its decision that it is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities

set out in legislation and, as it has not been established that daily living activities are significantly restricted (criterion 4); therefore, it cannot be determined that significant help is required from other persons.

The Panel therefore finds that the ministry's reconsideration decision was reasonably supported by the evidence and that it was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the decision of the ministry.