

APPEAL #

### **PART C -- DECISION UNDER APPEAL**

(State the reconsideration decision)

The following is a summary of the Reconsideration Decision of March 19, 2008, which denied the appellant the Persons with Disabilities designation:

The ministry finds that you have not met all of the criteria for the Persons with Disabilities designation. You are at least 18 years of age and a medical practitioner confirms your impairment is likely to continue for at least 2 years. The ministry is not satisfied that you have a severe physical or mental impairment or that your daily living activities are directly and significantly restricted either continuously or periodically for extended periods. Therefore it cannot be determined that you require significant help or supervision.

### **PART D -- RELEVANT LEGISLATION**

(State the relevant Legislation considered)

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**

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

Time Lines

March 18, 2008. The appellant submitted a Request for Reconsideration of the ministry decision to deny her the Persons with Disabilities (PWD) designation, along with a letter from her physician.

March 19, 2008. The ministry completed a review and explained the reasons for denying the request for the PWD designation.

April 2, 2008. The Employment and Assistance Appeal Tribunal received a Notice of Appeal from the Appellant.

Facts

The advocate for the appellant asked the appellant to describe her medical conditions and how they affected her daily living. These were: type 2 diabetes, fibromyalgia, chronic diarrhea, cervical spondylosis and depression. She stated that she has trouble getting out of bed and must roll over on her stomach, get on her hands and knees and stand from this position. As this takes time, it can cause accidents from her having chronic diarrhea. The cervical spondylosis can be very painful and impedes her from reaching above shoulder height. The appellant does work about three days a week as a dog groomer and has trouble lifting more than 10-15 pounds. She is able to cook but requires help from her husband with opening cans as well as vacuuming, dishes and carrying groceries. She stated that some days are worse than others. When she goes shopping, she uses the cart for support.

The appellant's husband appeared as a witness and confirmed that he helps with housework and does the reaching for things on high shelves and lifts articles that are over 15-30 pounds. He stated that the appellant gets depressed and that they both suffer with memory problems.

The physician who provided both the Physician's Report and the Assessor Report also wrote a letter of support, which was available to the ministry at the time of the reconsideration. The original reports indicate that the appellant can walk 2-4 blocks unaided, climb 5+ stairs, lift 15-35 pounds and sit for less than one hour. There are significant deficits with memory, emotions, motivation and attention. For the 'Daily Living Activities' there are 33 areas in which to assess a person's need for assistance ranging from independent to needing continuous assistance. The prescribed professional (physician) ticked off independent 33 times and stated, "the appellant is doing actually very well with her daily living activities".

The same prescribed professional was later asked to write a letter to support the appellant's application for a ministry review of the denial for the PWD designation. The physician states that the appellant indicated that she didn't require help because she was getting the help when needed from her husband. The appellant now says that she thought the questions meant, "did she require help from someone other than family".

Based on all the information provided, the ministry found that the appellant does have an impairment that will continue for at least two years. The ministry did not find however that the impairment was severe or that it significantly restricted the appellant's ability, either continuously, or periodically for extended periods to do daily living activities. Therefore, the ministry could not determine that the appellant required significant help. The ministry in attendance at the hearing explained to the appellant that the ministry realized that there were medical conditions but questioned the impact they had on her daily living activities.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in this hearing is the reasonableness of the ministry decision to deny the appellant the PWD designation. Section 2 (2) and (3) of the EAPWDA lists five criteria that must be met for the ministry to approve the PWD designation: you must be over 18 years of age; you must have a severe physical and/or mental impairment; in the opinion of a medical practitioner your impairment is likely to continue for at least two years; in the opinion of a prescribed professional, your impairment must directly and significantly restrict your ability to perform daily living activities either continuously, or periodically for extended periods; and in the opinion of a prescribed professional you require help to perform these daily living activities.

The ministry found that the appellant met the age criteria and that a medical practitioner confirmed that the appellant's condition would continue for at least two years. However, the ministry is not satisfied that the appellant's physical impairment is severe or that the daily living activities are significantly restricted either continuously or periodically for extended periods. It could not therefore be determined that significant help from another person would be required.

The appellant argues that when the physician and assessor reports were being done, the appellant didn't understand that when she answered questions about help needed with daily living activities, that this meant assistance from someone other than her husband. The appellant described her various medical conditions and provided the panel with tasks that did require her to seek help from another person. Chronic diarrhea certainly can cause serious problems with her working three days a week but at this time she is still working.

The panel had difficulty with determining which of the three opinions expressed by the prescribed professional to use in its decision. On October 29, 2007, it was indicated that the appellant did not require any aids for her impairment. She could walk 2-4 blocks, climb 5+ steps, lift 15-35 pounds, but did have deficits with cognitive and emotional functions. The assessment done December 17, 2007 indicated that not one of the 33 areas of daily living activities were anything other than 'independent'. Five months after the initial assessment, the prescribed professional wrote a letter for the appellant stating that she was astonished to hear that the appellant had been denied PWD status because the combined effect of the conditions can be expected to significantly impair her ability to do daily living activities. The physician goes on to describe actions that cause the appellant pain and there are times that she does require help. The panel is basing its decision on all three assessments done by the prescribed professional.

The EAPWDR, Section 2 (1) lists eight daily living activities that are considered when applying the designation:

- (i) prepare own meals; some help required
- (ii) manage personal finances; able to do
- (iii) shop for personal needs; able to do, help needed with heavy items
- (iv) public or personal transportation; husband drives
- (v) perform housework; some help required
- (vi) move about indoors and outdoors; able to do
- (vii) personal hygiene and self care; able to do
- (viii) manage personal medication; able to do

After considering all of the evidence, the panel finds that the prescribed professional referred to in the EAPWDA, Section 2 (2) (b) did not clearly indicate that the appellant has a severe impairment that significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods or requires help to perform those activities. The panel therefore confirms the Reconsideration Decision as per Section 24 of the EAA, as it is a reasonable application of the legislation.

ATTACH EXTRA PAGES IF NECESSARY