

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The following is a summary of the Reconsideration Decision of March 28, 2008 which denied the appellant the Persons with Disabilities designation:

The ministry finds that your application has met the age and duration criteria set out in the legislation. However, it does not establish that you have a severe physical or mental impairment, or that your activities of daily living are significantly restricted. It is not established that you require significant assistance with regard to your daily living activities. For these reasons, you do not meet the criteria necessary to establish eligibility. Therefore, the ministry finds that you are not eligible for designation as a Person with Disabilities.

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 19, 2008. The appellant submitted a Request for Reconsideration of the ministry decision to deny her the Persons with Disabilities (PWD) designation.

March 28, 2008. The ministry completed a review and explained the reasons for denying the request for the PWD designation.

April 3, 2008. The Employment and Assistance Appeal Tribunal received a Notice of Appeal from the appellant.

Facts

The ministry representative phoned to say that there had been a crisis at the ministry office and she would be about 15 minutes late. The panel chair informed the appellant that under the circumstances, the hearing would be delayed until the ministry arrived. The hearing commenced at 10:20 am with the ministry in attendance.

The appellant began by stating that she did not feel the ministry understood or gave enough consideration to her having fibromyalgia. She felt that they were mostly concerned that she was having hand pain due to osteoarthritis and unable to work. Her physician's diagnosis lists her conditions as fibromyalgia, depression, anxiety and painful hands. She stated that she did qualify for the PWD designation because some of her conditions are continual, while others are periodic over long periods.

It became evident to the panel that the appellant was unsure about the requirements so the panel proceeded to ask a number of questions to determine her status. She has been on income assistance for approximately six months and did have input with both the physician and assessor reports. She stated that she felt they gave an accurate description of her conditions. The appellant lives with her husband in a house that is a single level, in town and has about five steps to get up to the porch. She is able to drive and use her car for shopping. Her husband helps with the meals but usually she can cook. On bad days, they get fast food or something easy to make. The bad days are when the pain is at its worst or when she is suffering from depression. The appellant stated that sometimes she requires help with housework but that family members nearby will help. She said that the ministry pays for the medications listed in her application and she needs her husband to remind her at times to take them.

The ministry representative 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.

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 the ministry did not understand the seriousness of fibromyalgia. It not only causes severe pain but also affects her ability to be a reliable person who could be trusted to be at work and do what is required to earn a living. Her sleep patterns are also very disrupted and this causes even more fatigue, confusion and anxiety. She stressed the point that she has good days and bad days and that it is hard to know when the bad days are going to occur.

Based on the facts given by the appellant during the hearing, as well as the reports done by the prescribed professionals, it appears that the appellant can manage most daily living activities at this time with a little help from her husband. She also stated that there are a number of family members in the area that can assist if required.

Her physician indicates that the appellant does not require any aids for her impairment. She can walk 1-2 blocks, climb 5+ stairs, lift 5-15 pounds and remain seated less than one hour. He only indicates a continuous restriction with outside mobility and management of medications. The assessor who has only known the appellant for one month deviates somewhat in her assessment but also indicates independence in many areas with only continuous help needed in food preparation and cooking.

After considering all of the evidence, the panel finds that the prescribed professionals 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 (a) of the EAA, as it is a reasonable application of the legislation.

ATTACH EXTRA PAGES IF NECESSARY