

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision of February 12, 2008 to deny the appellant the Persons with Disabilities (PWD) designation. The Ministry's decision was based on the *Employment and Assistance Act, Section (2) & (3) and the Employment and Assistance Regulation, Section 2*. The act describes the five criteria the appellant must meet to be approved for the PWD designation. The Ministry is not satisfied that the appellant has a severe physical impairment but is satisfied that the appellant has a severe mental impairment. However, the ministry is not satisfied that the severe mental impairment significantly restricts daily living activities in the opinion of a prescribed professional. These activities are described in *the Employment and Assistance Regulation, Section 2*.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

EAPWDA	<i>Employment and Assistance for Persons with Disabilities Act, Section 2 & 3</i>
EAPWDR	<i>Employment and Assistance for Persons with Disabilities Regulation, Section 2</i>

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).

The evidence before the Ministry was a report dated November 11, 2007 from the appellant's physician, the assessor's report dated September 10, 2007 and a Neuropsychological/Psychovocational Assessment report completed in June 2007.

- The minister is satisfied that the mental health information contained in the report establishes a severe mental impairment.
- The physical diagnosis contained in the report includes COPD, hypothyroid, cervical arthritis and disc disease. The physician report notes the appellant's ability to walk a few blocks, climb 5+ stairs, lift 5-15 lbs and sit for less than an hour. The report notes that she needs assistance with vacuuming and laundry twice weekly. Although the ministry acknowledges some functional skill limitations for lifting and sitting, the ministry is satisfied that overall functionality is not severely impaired.
- Nowhere in the physician's report does it state that her impairment directly restricts the ability to perform daily living activities.
- A Neuropsychological/Psychovocational Assessment report noted that appellant stated she is independent for basic activities of daily living and she is able to complete instrumental activities of daily living such as shopping, banking although she has some difficulty. She receives no help from her family.

The Ministry is not satisfied that the appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods.

- The appellant's physician notes restrictions to personal care, basic housework, daily shopping, mobility outside the home and use of transportation. However, the physician also notes no restrictions on meal preparation, management of medications or finances, mobility inside the house or social functioning.
- As the assessor report notes 22 out of 28 daily living activities are performed independently, the ministry concludes that this is not evidence of a direct and significant restriction in the appellant's ability to perform daily living activities.
- Social functioning is not restricted according to the physician report and the assessor also notes that the appellant is independent in making social decisions. The ministry concludes that there is not sufficient evidence of any restriction to her ability to function socially.

Since the appellant's impairment is mental and not physical, and the ministry has no evidence that the appellant has significant restriction in her ability to perform daily living activities, and it cannot be determined that significant help is required, the request for PWD designation was denied.

The appellant's representative referred to the physician's report that described depression disorder, hypothyroid, COPD, arthritis and anxiety disorder as the specific diagnosis. The appellant produced a number of medications she takes to help with her mental and physical impairments. She also described periodic pain, irritable bowel disorder and problems with sleep. The representative states that there is no clear divide between mental and physical disorders. The appellant and her representative stated that there are "bad days" when the appellant cannot do some things or needs help with such things as vacuuming, laundry, shopping and anxiety with the use of transportation. The representative disagreed with the physician regarding the ability with climbing stairs and lifting. The representative states that there has been a huge change in her physical ability since the physician and Neuropsychological/Psychovocational Assessment report. The symptoms have deteriorated.

ATTACH EXTRA PAGES IF NECESSARY

The witness who has known the appellant for 6 years, states she has seen changes in the appellant's ability to do daily living activities and she should be seeing a specialist. The witness has seen detrimental effects of medication, lifting restrictions, difficulty with housework and difficulty with mobility.

The Ministry representative spoke in support of the reconsideration decision and that the ministry has concluded that the appellant has a mental impairment.

The Panel finds as fact that the appellant has a mental impairment and has some physical difficulties. The various physician, assessor and psychological reports do not provide clear evidence of a significant restriction to the appellant's ability to perform daily living activities.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue to be decided is the reasonableness of the Ministry's decision to deny the appellant a PWD designation based on the information available to the Ministry at the time of the reconsider decision.

The *Employment and Assistance for Persons with Disabilities Act Sec. 2 (2) and Sec. 2(3)* provides for five criteria that must be met to be approved for PWD designation.

The Ministry has concluded that the appellant does have a severe mental impairment but not a severe physical impairment in the opinion of a medical practitioner (EAPWDA Sec. 2(2) (a)) and in the opinion of a prescribed professional, the mental impairment does not directly or significantly restrict the appellant's ability to perform daily living activities (EAPWDA Sec. 2(2) (b)).

The appellant argues that her condition has deteriorated and that she has a number of physical impairments that restrict her ability to perform housekeeping, shopping and other physical tasks. She currently requires help from friends and her son but at the time of the reconsideration, this could not be determined.

After considering all the evidence, the panel finds that the appellant does not meet the legislation requirements of the designation of PWD. Although the appellant has a severe mental impairment none of the prescribed professionals indicate that daily living activities are significantly restricted. The panel finds that the Ministry's decision is a reasonable application of the legislation in the circumstances of the applicant and is reasonably supported by the legislation. As such the Ministry's decision must be confirmed under Section 24 of the Act.

ATTACH EXTRA PAGES IF NECESSARY