

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated December 8, 2008 which held that the appellant did not meet the legislative criteria for designation as a person with disabilities (PWD) under the Employment and Assistance for Persons with Disabilities Act, Section 2. The Ministry concluded that

- The appellant does not have a severe mental or physical impairment.
- The appellant's impairment does not significantly restrict the appellant's ability to perform daily living activities.
- The appellant does not require the significant help or supervision of another person to perform daily living activities restricted by the appellant's impairment.

## 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).

The appellant did not attend the hearing and after confirming with the tribunal that the appellant had been properly notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry was comprised of:

- The original application for PWD designation.
- The appellant's request for reconsideration.
- The physician and assessor reports both completed by the appellant's family physician.
- A letter dated November 27, 2008 in support of the appellant signed by the appellant's mother, sister and daughter.
- A letter dated November 23, 2008 from a physician in the medical clinic of a correctional facility.

The evidence in dispute is the severity of the appellant's impairment and whether or not her impairment directly and significantly restricts her daily living activities either continuously or periodically for extended periods of time, requiring assistance.

Based on the appeal record, the panel confirms the following facts:

- The physician reports that the appellant has the following medical conditions: Crohn's disease, arthritis and colitis and has undergone surgery to alleviate the symptoms of the Crohn's disease.
- The assessor's report indicates that the appellant suffers severe periodic abdominal pain, diarrhea and eating problems as a result of her medical conditions.
- The appellant reports that she is periodically unable to get out of bed or cook for herself due to her Crohn's disease and that she receives periodic assistance with these activities from family members.

## PART F – REASONS FOR PANEL DECISION

State the reasons for the panel decision)

The issue to be decided on this appeal is whether or not the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The ministry acknowledges that the appellant has met two out of the five legislative criteria for a PWD designation (*age requirement and impairment is likely to continue for at least two years*), but has not met the remaining three requirements of Section 2(2) and (3) of the Employment and Assistance for Persons with Disabilities Act namely:

- The minister is satisfied that the applicant has a severe mental or physical impairment; and
- In the opinion of a prescribed professional the impairment directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods;
- And as a result of those restrictions, the person requires help to perform those activities.

Based on the information provided by the appellant's physician in the appellant's PWD application, the ministry concluded that the appellant is not significantly restricted with daily living activities. Further, because the ministry has concluded that the appellant is not significantly restricted with daily living activities, the ministry found that it could not be determined that the appellant requires significant help or supervision of another person or the services of an assistance animal.

The appellant's argument is that at times her attacks are so severe that she requires assistance in preparing meals and going to the bathroom. She states that she experiences severe pain, diarrhea and vomiting and is unable to work.

The appellant's physician reports that the Crohn's disease and colitis can flare up at unexpected intervals and may cause severe pain and diarrhea, however the evidence does not indicate a severe physical or mental impairment as the appellant is independent with mobility and functional skills, and there is no reported deficit to cognitive or emotional functioning. The physician also reported that functional skill levels regarding lifting, sitting, walking distance and step climbing were not applicable in this application. She indicates that the appellant is able to independently do all activities related to mobility and physical activities. With respect to cognitive function, no mental health condition is reported nor are there any deficits to cognitive and emotional functioning. The physician reported minimal impact to motor activity.

Based on the appeal record, the summary of facts set forth in PART E above, and the following:

- A review of the ministry's reconsideration decision and its position regarding the appellant's physical functional skill levels and capabilities and the appellant's mental impairment;
- A review of the physician and assessor reports submitted with the PWD application;
- The written evidence of the appellant and the appellant's family;

ATTACH EXTRA PAGES IF NECESSARY

the panel finds that the appellant does not meet the three legislative criteria set forth above. The panel finds that there is no evidence of a mental impairment and the assessor's report indicates that the appellant is independent with respect to mobility and physical ability and that the only impact on daily functioning is a moderate impact on bodily functions and a minimal impact on motor activity. Also the assessor reports that the appellant is independent with respect to all daily living activities. There is no evidence to indicate that the appellant requires an assistive device to perform daily living activities. Finally, the panel finds that even though the appellant receives assistance from family members occasionally, she does not require the significant help or supervision of another person to perform these activities.

In conclusion, the panel finds the ministry's reconsideration decision denying the appellant a PWD designation because the appellant did not meet all of the legislative criteria for approval reasonably supported by the evidence and is a reasonable application of the applicable legislation in the circumstances of the appellant appealing the decision and, therefore, confirms the ministry's reconsideration decision under Section 24(2)(a) of the EAA.