

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In a reconsideration decision dated 2008 Jan 9, the ministry gave the following reasons for denying the appellant Persons With Disabilities (PWD) designation:

- Although the appellant's physician diagnosed the appellant with severe degenerative disc disease with some restrictions on physical activities, only two daily living activities (DLAs) were restricted, basic housekeeping and shopping.
- The physician did not indicate the nature or extent of the assistance required for those two DLAs.
- Other DLAs were indicated by the physician as being independent, with no restrictions noted.
- The physician did not indicate any assistive devices were required.
- The ministry found there were no DLAs indicated to be restricted as a result of mental impairment.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance (EA) for PWD Act, Section 2.

EAPWD Regulation, 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 evidence before the ministry was the appellant's original PWD application.

The appellant's physician, who also completed the assessor's portion of the PWD application, diagnosed the appellant with severe degenerative disc disease and facet joint osteoarthritis. This resulted in chronic lower back pain and bilateral leg pain. The physician indicated no mental impairment.

The physician noted the appellant can walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift under 5 pounds unaided and sit for under 1 hour. Some aspects of her mobility and physical ability took significantly longer than typical, but did not specify how much longer.

The physician indicated the appellant was independent in all areas of DLAs except periodic assistance was required in carrying purchases home, which the appellant's daughter assisted. The physician also noted that basic housekeeping took significantly longer than typical but did not indicate how much longer.

The panel accepted these facts, as the parties did not dispute them.

At the hearing, the appellant stated that she had undergone a CT scan and after evaluation by her surgeon, had been advised she would be slated for disc-fusion surgery as soon as an MRI had been completed. The appellant said this should be done very soon, probably by the end of this month.

The appellant also stated that since her original PWD application, her condition had worsened. She can no longer shop for groceries, relying on her daughter to do that, and cannot contemplate any kind of employment.

The ministry submitted a document at the hearing, which restated the reasons in the reconsideration decision for denying PWD status. The panel found this document was not evidence but accepted it as a written summary of the ministry's position.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's decision to deny the appellant PWD status.

Section 2(1) of the EAPWD Regulation states that DLA means the following activities:

- (i) prepare own meals;
- (ii) manage personal functions;
- (iii) shop for personal needs;
- (iv) use public or private 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...

Section 2(2) of the EAPWD Act states in part that a person may be designated as PWD if the ministry is satisfied the person has a severe physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts the persons ability to perform DLAs either continually or periodically for extended periods and, as a result of those restrictions, the person requires help to perform those activities.

The appellant argues that she does have a severe impairment as diagnosed by her physician and that her activities are limited by constant pain. She argues her DLAs are significantly restricted and she does require significant help from her children in housekeeping and doing errands.

The ministry, in its written summary of its position, says that the appellant does not have a severe impairment because the restrictions in physical ability are not severe in terms of overall functionality. The ministry says that because the appellant is independent in completing all DLAs but one, her impairment does not significantly restrict her ability to perform DLAs. The ministry also says that since the appellant is independent in most DLAs, it cannot be determined that the appellant requires the significant help or supervision of another person, assistive device or the services of an assistance animal.

The panel finds that the evidence of the appellant's physician on the assessor portion of the PWD application indicating the appellant is independent in most areas of DLAs does not support the appellant's argument.

The panel determines that the ministry's reconsideration decision was reasonably supported by the evidence, therefore the panel confirms the ministry's reconsideration decision in accordance with the Employment and Assistance Act, Section 24 (2) ( a)

ATTACH EXTRA PAGES IF NECESSARY