

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision of April 15, 2008 to deny the appellant the Persons with Disabilities (PWD) designation. The Ministry's decision was based on the *Employment and Assistance for Persons with Disabilities Act, Section 2* and the *Employment and Assistance for Persons with Disabilities 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 mental or physical impairment and in the opinion of a prescribed professional, the following criteria has not been met:

- *The appellant's impairments do not significantly restrict her ability to perform daily living activities*
- *The appellant does not require significant help or supervision of another person to perform daily living activities.*

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

EAPWDA *Employment and Assistance for Persons with Disabilities Act, Section 2*

EAPWDR *Employment and Assistance for Persons with Disabilities 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 a report dated January 10, 2008 from the appellant's physician and the assessor's report dated February 19, 2008.

- The physician's report described a left wrist fracture, suspected reflex sympathetic dystrophy and moderate renal failure as the specific diagnosis.
- Both the physician and the assessor report that there are some limitations to the appellant's functional skills, physical abilities and emotional functioning.
- The physician has indicated that the appellant can walk 4+ blocks, climb 5+ stairs unaided and has no limitations with extended sitting.
- The occupational therapist assessor states that the appellant is limited to right hand use only and requires periodic assistance with lifting, carrying and holding. The report states further that the appellant is able to perform independently all activities requiring mobility and physical ability although she is limited to right hand use.
- The physician does not diagnose a mental condition but notes generalized anxiety disorder being treated with medication. The assessor notes 4 moderate impacts and 1 major impact to cognitive and emotional functioning. However, the assessor does not report that these impacts directly restrict the appellant's ability to perform daily living activities. The assessor reports that all activities related to social functioning are managed independently. However, anxiety causes some limitation to cognitive and emotional functioning.
- Although the physician has reported that the appellant experiences continuous restriction with self care, meal preparation, basic housework, shopping and mobility, little information is provided about the degree of restriction and the extent of assistance the appellant requires to perform daily living activities. The only comments regarding the degree of restriction are concerning the lack of use of the appellant's left hand. Conversely, the assessor notes most of the daily living activities can be performed independently with the exception of assistance with shopping for larger purchases and meal preparation.
- The physician describes assistance is required to travel to appointments, housework, shopping, meal preparation and dressing. The degree and extent of this assistance is not described in his report. The assessor reports independence with most daily living activities and occasional assistance from her family.

The Ministry is not satisfied that the information provided demonstrates that the limitations described above result in a severe physical or mental impairment. Also, the ministry is not satisfied that the prescribed professionals confirm that as a result of these limitations, the appellant requires help to perform daily living activities.

The appellant provided evidence that she has a significantly comminuted left wrist fracture that was treated operatively. She has not regained full range of motion and will be disabled in this regard for a significant time. This information was presented at the hearing in a letter from an orthopedic surgeon. Although this letter was not before the Ministry at the time of reconsideration, it supports the information provided in the physician report. Therefore, the panel accepts this document as evidence. The appellant described herself as someone who wants to work but cannot due to her wrist fracture. She is finding it difficult living on basic benefits. She is taking multiple medications for pain and anxiety and visits a physiotherapist two times a week. The appellant stated she can dress herself but can't prepare meals and doesn't do housework. She can't open a can or jar but can pick up a plastic cup with her left hand. She resides with her daughter who helps her. The appellant wants to get back to work and feels she will regain sufficient mobility in her hand to allow her to return to work.

The appellant also stated that she is right handed.

The Ministry representative spoke in support of the reconsideration decision but recognized that the appellant has an injury that will last at least 2 years. The appellant does not qualify for PWD designations as she does not meet the requirements of the legislation. She does not meet the criteria as she is independent in most areas.

The panel finds that the reports from the appellant's physician and her assessor differ in the fundamental descriptions of her impairments and physical abilities. Also, the two reports contain descriptions of impacts on her daily living activities that are not consistent. The panel finds that the assessor's report is the more detailed and descriptive of the two and is more comparable to the oral evidence given by the appellant. The assessor also performed a mini functional test. Therefore, the panel is inclined to assign more significance to the assessor's report.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

Legislation

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 reconsideration 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 argues that the appellant does have a severe mental or physical impairment in the opinion of a medical practitioner (EAPWDA Sec. 2(2) (a)) and in the opinion of prescribed professionals, the impairment does not directly or significantly restrict the appellant's ability to perform daily living activities (EAPWDA Sec. 2(2) (b)). The impairment does not require significant help or supervision of another person to perform daily living activities.

The appellant argues that the restricted use of her left hand is a severe physical impairment that restricts her ability to perform all daily living activities. In addition, the appellant's arm and wrist injury has affected her mentally and emotionally. She suffers from anxiety and depression.

After considering all the evidence, the panel finds that the appellant does not meet the legislation requirements of the designation of Persons with Disabilities. Although the appellant has some physical impairment as a result of her wrist and arm injury, it is not a severe impairment that significantly restricts her daily living activities although it may take significantly longer to perform some functions. The evidence for a severe mental impairment is not supported by the physician's report although some generalized anxiety causes limitations to cognitive and emotional functioning is reported. Reports from the two prescribed professionals differ in some important areas of physical ability and functioning. The assessor's report is more detailed, descriptive and more comparable to the appellant's oral evidence.

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 (2) (a) of the Act.