

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision was made on January 3, 2008. In that decision, the Ministry denied the Appellant's application for designation as a person with disabilities ("PWD Designation"). The Ministry's decision was based on their determination that the Appellant does not have a severe physical or mental impairment, a health professional had not confirmed that the Appellant's impairment significantly and directly impairs her ability to perform daily living activities either continuously or periodically for extended periods, and it was not possible to determine that the Appellant requires the significant help or supervision of another person, the use of an assistance device or the services of an assistance animal, as required by the legislation.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities ("EAPWD") Act, section 2
EAPWD Regulation, section 2

PART E – SUMMARY OF FACTS

The Appellant applied for PWD status on December 5, 2007, when she relocated from where she had been on disability assistance.

The Appellant's Physician and Assessor Reports were completed by a physician at a walk in clinic, with whom the Appellant had had limited dealings. In the PWD application, diagnoses of chronic fatigue syndrome, depression, and insomnia are confirmed. The physician reports that on her worst days, the Appellant cannot get out of bed, and that on a good day, the Appellant's only functional impairments are an inability to lift for than 7kg, emotional disturbance, and impaired motivation. The physician also reports an anticipated need for increasing medication for the Appellant to be able to function.

According to the Assessor's Report, the Appellant has a poor ability to read when tired. Otherwise, the Appellant is reported to have a satisfactory to good ability to communicate. She is also reportedly independent in mobility and physical activity. Various aspects of her cognitive and emotional functioning are said to be impacted by her conditions. Major impacts are reported to her emotion and motivation, moderate impacts are reported to her executive functioning and sleep disturbance, and minimal impacts are reported to her consciousness, impulse control, attention/concentration, memory, motor activity, and psychotic symptoms. The Assessor's Report indicates that the Appellant is independent in all activities of daily living except that she requires periodic support to deal appropriately with unexpected demands.

According to the Appellant, the physician completed and submitted the Physicians and Assessor's Reports without first verifying the accuracy of the information they contained. Although she reportedly provided various specialists' reports to the physician a considerable time in advance of the PWD application, the Appellant informed the panel that the physician had apparently not consulted or relied on those reports when completing the PWD application. She identifies several areas of the report which she believes are inaccurate and asks the panel to prefer the evidence of her specialists where it conflicts with the PWD Physician and Assessor's Reports, as she believes her specialists better understand her condition and its impact on her.

In her submission, the Appellant refers to reports from her specialists, which include a diagnosis of "extreme dysfunction" due to her conditions. The specialists' reports include references to severe pain after walking, the need to break activity into short segments, and limit total activity to one to two hours per day, her severely limited ability to exercise and the increased pain and fatigue she experiences after exercise, her sleep disturbance, lapses of memory, episodic hypotension, irritable bowel syndrome, chronic allergies and extreme dysfunction due to chronic fatigue syndrome.

Regarding daily living activities, the specialists' reports indicate that on a good day, the Appellant's energy is approximately 35% of "normal," that on a bad day she is totally bedridden, and barely about to make it to the bathroom or the fridge. Those reports also indicate that the Appellant's physical weakness limits her ability to sit at a computer to read or work, and that standing causes her to feel faint, increase her pain and fatigue, and suffer from shortness of breath.

At the appeal hearing, the Appellant confirmed that she lives alone, and has little if any support. Consequently, she reports that many activities of daily living such a meal preparation simply do not get done in her home.

At the appeal hearing, the Ministry submitted that the panel should rely on the Physician's and Assessor's Reports. The Ministry representative was unable to indicate how much weight the Reconsideration Officer had placed on the specialists' reports submitted by the Appellant, but was able to confirm that they were available to the Reconsideration Officer prior to the Reconsideration Decision being made.

PART F – REASONS FOR PANEL DECISION

The issue to be determined in this appeal is whether the Appellant qualifies for PWD Designation.

In order to qualify for PWD Designation, and applicant must meet the following legislative criteria:

1. They must have be 18 years of age.
2. A medical practitioner must have confirmed that the impairment is likely to continue for at least two years
3. The Minister must be satisfied that they have a severe mental or physical impairment.
4. A health professional must have confirmed that the severe impairment directly and significantly restricts their ability to perform daily living activities, either continuously or periodically for extended periods; and
5. A health professional must have confirmed that, as a result of those restrictions, they require help performing daily living activities.

In the Reconsideration Decision, the Ministry accepted that the Appellant meets the first two criteria noted above, determined that the third and fourth criteria had not been met, and that as they had not determined that the Appellant's ability to perform daily living activities was restricted as required by the legislation, the Ministry could not make a determination of whether the final criterion had been satisfied.

On a review of all of the medical evidence, the panel is satisfied that the Appellant does in fact have a severe mental or physical impairment as the legislation requires. While the Physician's and Assessor's Reports may not have established this with certainty, when the specialists' reports are also considered, it is clear that the Appellant's impairment is severe. To find otherwise would be unreasonable on the evidence before the panel. In making this decision and determining how much weight to attribute to the specialists' reports and the Physician and Assessor's reports, the panel accepts that more weight should be placed on the specialist's reports, due to the fact that the specialists had more extensive dealings with the Appellant. The panel makes that determination notwithstanding the fact that some of the specialists' reports are dated, as the evidence clearly indicates that the Appellant's health is deteriorating, and there is nothing whatsoever to indicate that her condition is less serious than when the specialists wrote their reports.

The panel is also satisfied that the Appellant's impairment restricts her ability to perform her daily living activities either continuously or periodically for extended periods. While it appears that on occasion, on her good days, the Appellant may be able to perform many daily living activities, the panel accepts the evidence that her ability to do so is rare, and that the vast majority of the time, her ability to perform activities of daily living is impaired to the extent required by the legislation.

Finally, the panel is satisfied that the Appellant requires help to perform her daily living activities. Her specialists in particular identify the numerous restrictions on her ability to perform daily living activities, and the evidence confirms that without help, many of those activities simply do not get attended to.

The panel finds that the Reconsideration Decision is not reasonably supported by the evidence, and therefore rescinds that decision pursuant to section 24(2)(b) of the Employment and Assistance Act.