

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Appellant was denied his application for designation as a Person with Disabilities. The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWD) namely, the following criteria;

The minister is not satisfied that the impairment is severe,

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

It cannot be determined that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, sec 2
Employment and Assistance for Persons with Disabilities Regulation , sec 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 is diagnosed with degenerative disease of lumbar spine. The Panel reviewed the Appeal Record which included administrative information and the following:

- Notice of Appeal dated March 6, 2009
- Reconsideration Decision dated March 2, 2009
- Request for Reconsideration February 2, 2009
- Appellant's submission dated February 2, 2009
- Dr's letter dated Feb 02, 2009
- Appellant's application form dated November 12, 2008
- Physicians Report dated Nov 12, 2008
- Assessor's Report
- Ministry Checklist Summary
- Extracts from legislation

The Appellant submitted that he suffered from severe chronic pain and that his physical impairment had deteriorated since the date of his application. He said that he took the maximum dose of the pain killer, percocet, that his doctor would prescribe and that if he ran out before the doctor would renew the prescription then his pain was too severe for him to be able to do any daily living activities at all.

The Advocate read in to evidence a paragraph in a recent letter written by the Appellant's neurosurgeon that confirmed that the Appellant has significant back problems and limited range of motion. The neurosurgeon also wrote that the Appellant's posture and gait was visibly affected by back pain. The ministry had no objection to this oral evidence being admitted and the Panel accepted the oral testimony read by the advocate as evidence in support of material before the ministry under section 22 (4)(b) of the Employment and Assistance Act.

The Ministry stated that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD Act and the reason for the rejection of his application was that the Ministry was not satisfied that three of the criteria were satisfied. These were the criteria of severity of a physical or mental impairment, the restriction to daily living activities, and the help required.

The Ministry referred to section D of the Physician's Report dealing with Functional Skills. The Doctor indicated that the Appellant could walk 2-4 blocks unaided, climb more than 5 stairs unaided, could lift 15 to 35 lbs, and could remain seated for 1-2 hours. In the Assessor's Report the Doctor reported minimal impact on 3 cognitive functions and no impact on the remaining 11 cognitive functions in the list.

The Assessor marked the Appellant as independent in 33 of 34 Daily Living Activities (DLA's) listed in Part C of the Assessor's Report. The Dr's letter stated that the Appellant suffers from severe chronic lumbar back pain that effects his ability to work and doing his daily living activities takes much longer to perform. However in describing the additional time it takes to perform a list of 9 DLA's, the Doctor mentions times that vary from a few minutes longer to at most 30 minutes longer. This did not satisfy the ministry that the impairment significantly and directly restricted the Appellant from performing DLA's, either continuously or periodically for extended periods. In addition the ministry

stated that the medical evidence did not show that the Appellant uses an assistive device, significant help from another person, or the services of an assistance animal.

The Panel finds the following facts:

1. The Appellant's doctor is of the opinion that the Appellant suffers severe chronic pain in his lumbar spine
2. The Appellant takes prescription drugs to manage pain
3. The Appellant lives alone.
4. The Appellant receives help to do housework 2 times per week for approximately 2 hours per occasion
5. There is no medical evidence that the Appellant uses an assistive device or services of an assistance animal.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Sec 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act.

The legislation provides that in order to qualify as a person with disabilities (PWD) the criteria set out in section 2(2) and 2(3) of the EAPWD Act is applicable and reads as follows:

“(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

ATTACH EXTRA PAGES IF NECESSARY

The Ministry found that the Appellant met the first two criteria of age, and duration of the impairment.

The Ministry argues that the Appellant does not qualify for PWD because the Doctor had not noted significant restrictions in functional skill in Part B in the Physicians Report and in Part D of the Assessor's Report the physician marked the Appellant as independent in 33 of 34 Daily Living Activities listed. In addition there was no evidence of a severe mental impairment.

The Appellant argued that the medical reports were no longer accurate as he had deteriorated and now could no longer do the activities as well as he could in November when he submitted his application. The doctor stated in his letter that his condition was severe and it took him much longer to perform daily living activities that it would have when he was healthy.

On the basis of the Dr's letter and the Appellant's supportive testimony the Panel finds that Appellant's pain is severe which meets the 3rd criteria of severity.

The medical evidence supporting a finding of significant restrictions to DLA's was sparse. The Appellant is able to manage to perform the majority of the Daily Living Activities listed in Part C of the Assessor's Report, and in Part D of the Physician's Report was not noted as having any restrictions in Functional Skills such as walking, climbing stairs, sitting or lifting. The prescribed professional did not confirm that an impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. The Panel finds that the 4th criteria of significant restrictions to daily living activities was not shown.

The fifth criteria was not reasonably met because the Appellant's doctor did not state that as a result of significant restrictions in his abilities to perform daily living activities he required help to perform them.

There was no medical evidence of the use of an assistive device or the use of the services of an assistance animal. There was evidence of some help on a regular weekly basis for up to 4 hours for housework but the Panel found that did not amount to significant help from another person or persons.

For these reasons the Panel finds that the Reconsideration Decision was reasonably supported by the evidence and confirms the Ministry decision.