

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The following is a summary of the Reconsideration Decision of June 1, 2009 which denied the appellant his request to be designated a Person with Disabilities:

The minister is not satisfied that you have a severe physical or mental impairment. Your prescribed professionals do not confirm that your impairment directly and significantly restricts your ability to perform daily living activities either continuously or periodically for extended periods. Your prescribed professionals do not confirm that as a result of direct and significant restrictions, you require help to perform daily living activities.

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).

This hearing was adjourned from June 30, 2009 at the request of the appellant.

The evidence before the ministry was based on the physician report dated September 18, 2008 and the assessor report, which was done by a different physician on February 11, 2009. The appellant's advocate sent the original physician, who did the physician report, a two-page question-answer form letter on April 23, 2009. It requested further information, which was also considered in the Reconsideration Decision.

The physician report diagnosis was degenerative disc-lumbar, hypertension and mood disorder - depressed. It indicates that the appellant can walk 4+ blocks, climb 5+ stairs, and remain seated less than 1 hour. For cognitive and emotional function, it is indicated that there are deficits with depression, motivation, memory and sustained concentration. In the daily living activities area he indicates continuous restrictions for personal self-care, basic housework and shopping. No restrictions with meal preparation, mobility, managing medications or finances are indicated.

In response to the letter sent in April by the appellant's advocate, the physician rates the severity of the medical conditions as moderate to mild. He states the ability to lift is 5-15 pounds and the appellant has been unable to do much housework for the past few years. He would have difficulty standing preparing meals. His ability to socialize is continuously restricted due to depression and pain and he has moved to his present location to live with his parents.

The assessor report lists communication as good, with major impact in the area of emotion. It indicates independent for walking, climbing stairs and standing, with assistance needed for lifting and carrying. The daily activities section indicates independent for personal care, budgeting, medications and transportation. Continuous assistance is required for basic housekeeping and carrying purchases home. Although the majority of activities are independent, it takes the appellant longer to do them. The assessor notes that the appellant is new to town and is staying with family. He does have the use of a cane during severe flare ups of pain.

The advocate presented the panel with an attachment from the physician who did the assessor report. It was sent to the physician requesting further information regarding the appellant's ability to lift, carry and hold. The physician states that because of his impairment the appellant tires quickly and must lie down and rest. The physician also completed page 16 of 23 on the assessor report. He indicated major impact for attention/concentration and motivation, with 9 functions showing no impact. This evidence was accepted by the panel as written testimony in support of evidence referred to in the Reconsideration Decision and admitted under Section 22 (4) of the Employment and Assistance Act. The advocate also had the stepmother appear as a witness for the appellant, as she co-signed a supporting letter that was available for the Reconsideration. She discussed what was in the letter and answered questions from the panel.

The appellant provided evidence by answering questions from his advocate, as well as from the panel members. He described his daily activities and how they are impacted by his impairment. He is able to prepare meals, manage finances, and handle his personal needs, medications and personal hygiene with little help, but tires easily and has trouble sleeping. He tries to help with housework but tires easily and most activities take much longer to do than normal. The appellant can move about indoors and outdoors as well as drive, but again tires easily. He did receive a Workers Compensation Board (WCB) settlement for his injuries and is waiting on an appeal decision regarding the settlement.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this hearing is the reasonableness of the ministry's decision to deny the appellant the Persons with Disabilities status. To be designated as a Person with Disabilities, the applicant must meet all of the criteria set out in Section 2 of the Employment and Assistance for Persons with Disabilities Act. Specifically the minister must be satisfied that the appellant has a severe mental or physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts the applicant's ability to perform daily living activities as described in Section 2 of the Employment and Assistance for Persons with Disabilities Regulation. In the opinion of a prescribed professional, the restrictions must be either continuous or periodic for extended periods, and as a result of the restrictions, the person must require help to perform those activities.

The ministry's position is that the appellant meets the criteria of the legislation in that he is at least 18 years of age and his medical practitioner has confirmed that his impairment will continue for at least 2 years. The ministry argues, however, that he does not have a severe impairment and based on the physician and assessor reports, the prescribed professionals have not shown that the appellant meets the criteria of requiring help or that his ability to perform daily living activities is directly and significantly restricted either continuously or periodically for extended periods of time. In the Reconsideration Decision, the ministry points out that although the appellant requires more time than is normal, he is able to do many of the 'daily living activities' as prescribed in the legislation. Therefore, as it has not been indicated that he is significantly restricted in daily living activities, it cannot be determined that he requires significant help with these activities.

The appellant argues that because he requires help with daily living activities, he moved from where he lived and was injured to the city where he presently lives with his parents. He is no longer able to work and even though he is on several strong medications, he is in pain much of the time, which interferes with sleep, and consequently affects his mood swings and causes depression. He has received a settlement from WCB and is waiting on an appeal, but has had to accept financial help from his parents to pay for his car. He has been to a pain management program and has also been referred to an orthopedic surgeon who he is waiting to see.

The panel finds that the prescribed professionals have not confirmed that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods, or that a severe impairment has been established. The physician, when asked by the advocate to rate the severity, indicated moderate and mild. Even though both physicians answered follow-up letters from the advocate, neither the one who did the physician report nor the physician who did the assessor report indicated that the appellant was significantly restricted in doing many of the required daily living activities. Both indicated that several of the activities take him longer to do and are painful, but that he is able to do the majority of them. There are times that the appellant does require help but it is not indicated that these times are continuous or that any one of them requires help over a long period of time. Therefore the panel confirms the Reconsideration Decision as per Section 24 (2) (a) of the Employment and Assistance Act as it is a reasonable application of the legislation and reasonably supported by the evidence.

ATTACH EXTRA PAGES IF NECESSARY