

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated January 20, 2009, which denied the Appellant's application for designation as a Person with Disabilities (PWD). Section 2 of the EAPWDA authorizes the minister to designate a person who has reached the age of 18 years as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years and, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods. The prescribed professional must also confirm that, as a result of those restrictions, the person requires significant help to perform those activities. The Ministry's decision held that the Appellant met two of the legislated criteria; age and duration of his condition, but that he does not have a severe mental or physical impairment. In addition, the Ministry held that the Appellant's condition does not significantly restrict his ability to perform daily living activities to the extent that he requires significant help to perform them.

## 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).

### Evidence before the Ministry at Reconsideration:

- The Persons with Disabilities Designation Application, received November 10, 2008
- The Ministry's PWD Worksheet, dated November 28, 2008
- The Ministry's letter to the Appellant informing him of their decision, dated November 28, 2008
- The Appellant's Request for Reconsideration, dated December 17, 2008

The Appellant, at the hearing, advised that he suffers from severe lower back pain, stomach pain, depression, anxiety, poor memory and concentration and fatigue due to his medical condition. He noted that his physician indicated that he is restricted in six out of ten daily living activities (DLA's) on a continuous basis, and his assessor noted that he takes significantly longer than typical to perform all of his DLA's. The assessor wrote that he has no-one to assist him, but he requires assistance with DLA's and needs assistive devices such as grab bars and a back support.

### The Appellant presented new evidence at the hearing:

Oral evidence – the Appellant has now been provided with a back support which he wears continuously. He has also been provided with a TENS (Transcutaneous Electrical Nerve Stimulator) device by a hospital clinic to assist with pain management. He uses a stick to assist in getting out of bed because of pain. He stated that he has been diagnosed with Diabetes since the application for PWD designation was submitted.

Documentary evidence – the Appellant submitted a copy of a questionnaire from his physician giving additional information relating to his restrictions in performing DLA's.

The Ministry stated that they have no objection to the admission of the new evidence. The evidence was admitted by the Panel as supporting evidence under Section 22(4) of the Employment and Assistance Act.

The Ministry responded that their decision to deny the Appellant's application was based on the information submitted. The physician indicated that the Appellant is responding to treatment for depression. The information about his restrictions with DLA's appears to be self reported. In order for the Ministry to designate him as a PWD, there should be a more significant level of restriction with DLA's than what is reported in the Appellant's application. The assessor does not confirm that the Appellant is not performing DLA's because he is unable to do them.

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's application for designation as a Person with Disabilities (PWD).

Section 2 of the EAPWDA authorizes the minister to designate a person who has reached the age of 18 years as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years and, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods. The prescribed professional must also confirm that, as a result of those restrictions, the person requires help to perform those activities.

The Ministry's position is that the Appellant meets the age and two year duration requirements; however the Appellant's physician indicated that he is responding to medication to treat his depression, and the restrictions with DLA's listed were self-reported by the Appellant. The information does not support a determination that the Appellant has a severe mental or physical impairment. If the Appellant is significantly restricted in the performance of DLA's, the Ministry's position is that there should be a more significant level of assistance required than what is reported in the application.

The Appellant's position is that his condition should be viewed as a whole. He suffers from chronic pain and depression and does not have a good support network. He has a back brace and uses a TENS device in addition to medication to manage his pain. Both the physician and assessor have confirmed that he has significant difficulty performing DLA's to the point that he requires assistance to perform them.

The Panel does not place great weight on the additional information from the Appellant's physician that was admitted as supporting evidence. It does not differ materially from the information he provided with the Appellant's PWD application.

The Panel accepts the information provided in the original application for PWD designation, where the Appellant's physician refers to severe lower back pain. In addition, the physician refers to depression, fibromyalgia and a peptic ulcer. The physician indicates continuous restrictions in the performance of six activities of daily living and significant deficits with cognitive and emotional function. All of these factors support a finding that the Appellant's condition is severe.

The Panel accepts the assessor's indication that the Appellant takes significantly longer than typical to perform all 28 physical daily living activities, and the restrictions are clearly due to his condition. A prescribed professional has confirmed that he requires assistance from other people to perform them. The fact that he does not have enough assistance to perform daily living activities adequately is not an indication that he does not require it. The Panel finds that the legislated criteria regarding significant restrictions on the Appellant's ability to perform daily living activities and his requirement for assistance to perform them have been met.

The Panel finds that the Appellant meets the legislated criteria for designation as a Person with Disabilities and rescinds the Ministry's decision.