



## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In the reconsideration decision of December 23, 2008, the appellant was denied status as a person with disabilities (PWD) because the ministry found that her medical practitioner had not confirmed that her impairment is likely to continue for at least 2 years.

## **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).

The evidence before ministry at reconsideration consisted of a Physician's Report dated September 14, 2008, and an Assessor's Report dated September 22, 2008.

The Physician's Report dated September 14, 2008, states that the appellant suffers from a septic left hip, disc herniation in her back, hepatitis C, asthma, opiate abuse disorder and a visual impairment. The physician answers "No" to the question of whether the impairment is likely to continue for two years or more from today. He notes that "At best she would be a candidate for an artificial hip in 1 year depending on eradication of infection from bone in the hip and her recovery from opiate dependence and abuse."

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation. The appellant signed a release of information form on January 9, 2009 to allow an advocate access to information about her appeal and for the advocate to appear on her behalf at the appeal hearing.

The appellant's advocates advised the panel that the appellant resides alone. She suffers from the conditions outlined by her physician and takes numerous medications. The appellant continues to have an infection in her hip which precludes her from having hip replacement surgery. The appellant's advocate submitted a Supplemental Medical Opinion (SMO) which was completed by the appellant's physician on January 13, 2009. In this SMO, the appellant's physician confirms that the appellant's impairments are likely to continue for two years or more. The physician further states that the appellant will be considered for hip replacement surgery in 1 year if she has been clear of infection for 1 year and in good recovery from her substance abuse disorder. The panel admitted this oral and written evidence pursuant to section 22(4) of the Employment and Assistance Act (EAA) in support of the evidence which was before the ministry.

The ministry reviewed the legislation and the original information. In light of the SMO that was provided at the hearing of this appeal, the ministry states that the appellant likely now meets the requirement of having a physician confirm that her impairment is likely to last for 2 years.

ATTACH EXTRA PAGES IF NECESSARY

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## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The panel must decide whether the ministry's decision to deny PWD status to the appellant was reasonably supported by the evidence.

The EAPWDA, section 2, sets out 5 criteria to be designated as a PWD:

1. The appellant must have reached the age of 18;
2. The minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities.

There is no dispute that the appellant meets criteria 1, 2, 4 and 5; she is over the age of 18, the minister is satisfied that she has a severe physical impairment; her impairment directly and significantly restricts her ability to perform daily living activities and as a result of these restrictions she requires help to perform these activities.

The ministry's position at the appeal hearing is that the appellant has met criteria 3 based on the SMO that was provided by her physician.

The appellant's position is that she is eligible for PWD based on the new evidence submitted at the hearing.

On the evidence that has been provided by the physician in his SMO, the panel finds that the appellant's physician has confirmed that her impairment will continue for at least 2 years and as such the appellant meets criteria 3.

The panel therefore determines that the ministry's decision is not reasonably supported by the evidence and that decision is rescinded.

ATTACH EXTRA PAGES IF NECESSARY