

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated December 19, 2008 denied the Appellant's 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 middle age and lives in a rooming house. He is diagnosed with a paraumbilical hernia, coronary artery disease, headaches, colon cancer and tuberculosis contact. The Panel reviewed the Appeal Record which included administrative information and the following:

- Notice of Appeal dated January 4 2009
- Reconsideration Decision dated December 19, 2008
- Request for Reconsideration December 08,2008;
- Appellant's submission dated December 09,2008
- Medical Report PPMB dated October 15, 2008
- Letter from Landlord dated December 3, 2008
- Appellant's application form dated October 22, 2008
- Physicians Report
- Assessor's Report;
- Extracts from legislation

The evidence before the Ministry was that the Appellant suffers from abdominal pain and headaches as reported in the Medical and Assessor Report. The Medical Report and Assessor Report completed by the Appellant's doctor indicated that the Appellant was independent in his ability to perform his daily living activities. The Medical Information did not state the duration of his headaches and abdominal pain. It could not be determined that he needed help to perform daily living activities.

The Appellant referred to the PPMB Medical Report to show that the Doctor had written that he was unable to do his daily living activities during acute attacks of headaches and abdominal pain. He stated that his headaches could last 2 hours to all day per episode. He could not predict how long each headache would last but he said he has them everyday. He stated that sometimes the pain medication would dull them to a scale of 5 out of 10 but even then he was in a lot of pain. This oral testimony was new information that was admitted by the Panel in support of the information and records before the ministry when the decision was made. He then referred to:

1. Part E of the Physician's Report where the Doctor had answered yes to the question whether the impairment directly restricts the person's ability to perform Daily Living Activities.

2. Part F of the Physician's Report where the Doctor wrote that the Appellant had chronic headache and Abdominal pain, problem with interference in his daily living activities while has attacks. He is still being investigated for his headaches which is going on almost on daily basis.

3. Part B Assessor's Report, question 1. what impairment impact his daily living activities and the answer was headaches and pain

4. Part C and D of the Assessor's Report concerning the help required and the doctor wrote that he is ok with help from friend , and that he had good support by friend.

5. Letter from Landlord showing that they provide help for him to do even the simplest things like dressing when he has a severe headache and reminding him to take medication, eat , and go to doctor's appointments.

The Appellant also gave oral testimony that he moved to live in his current residence because rent included room and board and housekeeping so that he did not have to do the many daily living activities that he was no longer able to do. The Panel accepted the oral testimony as evidence in support of the information and records before the ministry when the decision was made.

Based on the information in the medical reports the Panel finds that:

1. the Appellant suffers from episodic headaches
2. the Appellant has headaches daily
3. the Medical Report contains contradictory information
4. the Appellant takes several types of pain medication
5. the Appellant has doctor's appointments more than 11 times per year

ATTACH EXTRA PAGES IF NECESSARY

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 EAAPWD Act is applicable. They are 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,"

The Ministry 's position is that the Appellant meets the criteria of age and duration set out in sect 2 and 2 (a) above, but that the Appellant has not met the criteria of severity, (Severity) or the criteria set out in 2 (b) (i) and (ii) , of being significantly restricted from performing daily living activities (DLA's). The Ministry argues that the Appellant does not qualify because the Doctor had not marked the boxes in the Physicians Report Part B as restricted for daily living activities and therefore concludes that he must be able to do all of his daily living activities independently. Because the ministry found that he was not restricted they did not determine that help was required, being the fifth criteria.

The Appellant argues that he has terrific headaches and abdominal pain every day and that he moved into his current home as it provides room and board and housekeeping service so that he does not have to try to perform his daily living activities. He stated that the Doctor had said yes that he needed help with his daily living activities as can be seen in question 5 of the Physicians Report but then marked independent in the boxes. He explained that the Doctor marked the boxes that way because he has help where he lives and he does not have to do basic housework, cook, clean or arrange transportation as it is all done for him.

The Appellant's doctor says that the appellant has chronic headaches and during the headaches he is unable to function. The Appellant rates the pain as "15" in a scale of 1-10. The fact that he needs more than 11 doctor appointments per year shows he relies heavily on the provincial medical system. The Panel finds this medical evidence is persuasive that the impairment is severe, thus satisfying the third criteria of severity.

The Doctor's evidence is contradictory for DLA's because the Doctor provides written information that differs from the information from the boxes ticked off by the Doctor for restrictions in performing a list of daily living activities. The Panel gives more weight to the Doctors written statements because the written statements are specifically written by the Doctor addressing his patient. This occurs when the doctor marks, yes, he needs help with DLA's, and when the doctor says that when the appellant has headaches he is unable to function. The Doctor wrote (in the PPMB) Report, that the Appellant is unable to do daily living activities during acute attacks of abdominal and headache pain. However, when the doctor ticks a box as "independent", Independent can also mean the Appellant is independent because someone else is doing the activity for the appellant.

The Panel gave greater weight to the written statements of the Doctor than to the general tick boxes for the following reasons: 1. his written statements are specific to the Appellant and not generic answers, 2. the ministry did not call the doctor's office for clarification of the contradiction. In response to question on this point the ministry stated that where there is a contradiction by the doctor in the documentation it is normal procedure for the ministry to call the doctor for clarification. In this case the ministry said there was no evidence in the file that anyone from the ministry's office had attempted to call the doctor's office to seek clarification. The Panel found as a fact that the ministry had not called the doctor's office. Accordingly the written material from the doctor satisfies the fourth criteria that in the opinion of a prescribed professional the Appellant's impairment directly and significantly restricts his ability to perform daily living activities periodically for extended periods.

There is evidence from the Doctor, the Appellant and in the Landlord's letter confirming that the Appellant receives significant help from other persons. On the basis of this evidence the Panel finds that the Appellant receives significant help from others in performing his Daily Living Activities, which is the fifth criteria

For these reasons the Panel finds that the Reconsideration Decision was not a reasonable application of the Legislation in the Appellant's circumstances. The Panel rescinds the Decision.