

[REDACTED]

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated February 12, 2009 which held that the appellant did not meet the legislative criteria for designation as a person with disabilities (PWD) under section 2 (2) of the Employment and Assistance for Persons with Disabilities Act. The Ministry concluded that the appellant does not have a mental or physical impairment; does not have an impairment that directly and significantly restrict his ability to perform daily living activities and the appellant does not require significant help or supervision of another person to perform daily living activities restricted by his impairment.

The ministry found that the appellant met the age requirement and that a medical practitioner did confirm that the impairment is likely to continue for at least 2 years, either continuously or periodically for extended periods.

## PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act, Section 2

## PART E – SUMMARY OF FACTS

The evidence before the Ministry was comprised of the original application for PWD designation completed by a prescribed physician on December 5, 2008 that included numerous background reports by medical consultants over a number of years. Letters dated February 3 and February 5, 2009 from the applicant. An adjudicator's report dated January 22, 2009 and submitted on January 26, 2009

Section 2 of the Employment and Assistance for Persons with Disabilities Act lists five criteria that must be met in order for the ministry to grant this designation.

The appellant submitted a 7 page type written report at the hearing in support of his symptoms and his case history. Members of the panel read the report prior to the start of the meeting and concluded that the report could be admitted under section 22(4) (b) of the EAA.

The appellant's physician has known the appellant for about 25 years and explained that his patient has more of a psychological impairment rather than a physical impairment. The prescribed professional explained that the appellant has had a difficult life, was in foster care, was abused and has had problems with drug and alcohol use. A neurological assessment shows a shift of the vertebrae. Neurosurgery was contemplated but in the end rejected. The medical practitioner aided the appellant with an application for C.P.P. which was not granted. The physician explained that he was helping his patient in getting a better way of life.

The ministry representative presented a type written summary submission to the hearing which was also admitted. The ministry restated the reason for denial as the physician has not confirmed that the appellant has a severe mental or physical impairment; the impairment does not significantly restrict his ability to perform daily living tasks and the appellant does not require significant help or supervision to perform these tasks. The ministry representative explained to both the physician and the appellant that the appellant did not need to have a PWD designation in order to receive benefits and that the appellant might qualify for benefits without the PWD designation.

The panel admitted both the oral and written testimony submitted during the hearing, in support of the information and records before the Ministry in the original application for PWD as referred to in subsection 22(4) of the Employment and Assistance Act. Members of the panel deliberated over the admissibility of the new oral and written information provided and found that the new evidence could be admitted as it was in support of the issue before the panel.

The appellant was asked if the number of drugs he was taking was interfering with his ability to work and he answered: "I don't think so" – it was standing up that bothered him. He did mention he recently had helped one of his friends paint the roof of his truck and that this caused him pain. He also mentioned that rather than walking he now takes his bike down town as it puts less stress on his back. In his written submission to the hearing the appellant states that he does not have a severe mental or physical impairment and that the impairment does not directly and significantly restrict his ability to perform daily living activities. He also mentions that he does not require the significant help or supervision of another person to perform daily living activities restricted by his impairment.

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on this appeal is the reasonableness of the ministry's reconsideration decision finding the appellant ineligible for the requested Persons with Disabilities (PWD) designation.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Minister must be 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 the prescribed professional, directly and significantly restricts the person ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those activities, the person requires help to perform those activities.

The Ministry contends that:

1. The assessment from the prescribed professional does not establish that the appellant has a severe mental or physical impairment that directly and significantly restricts his daily living activities either continuously or periodically for extended periods.
2. The appellant does not meet the help criterion because he does not need an assistance animal, does not use any assistive devices, and does not need significant help or supervision of another person.

The panel reviewed the five criteria that the appellant must meet to be approved for PWD designation. The ministry found that the appellant met the age requirement and that the prescribed professional confirmed that the impairment is likely to continue for at least 2 years. The panel concluded that it was not established that the appellant had a severe mental or physical impairment as the medical practitioner in his assessment report notes that the appellant needs periodic support or supervision in his daily living activities but is independent in most of his daily living activities and that his daily living activities are not directly and significantly restricted either continuously or periodically for extended periods by the severe impairment as he is living on his own and maintains an independent style of living. The appellant in his 7 page written submission was consistent with the medial practitioner findings, as he declares that he has not a severe mental or physical impairment or that his impairment directly and significantly restricts his ability to perform daily living activities. The appellant also states that he does not need or require the significant help or supervision of another person to perform daily activities restricted by his impairment

The panel found that after reviewing all of the information provided, that it could not establish a severe physical or mental impairment of functioning and that there was no evidence that there was a help requirement in his daily living activities as they are not directly and significantly restricted either continuously or periodically for extended periods by the severe impairment.

The panel concluded that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant's case under section 24 (1) (b) and 24 (2) (a) of the Employment and Assistance Act. The panel confirms the ministry's decision.

ATTACH EXTRA PAGES IF NECESSARY