

## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated March 11, 2009 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

## **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 ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

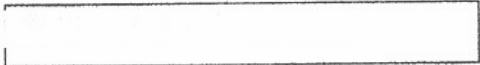
The evidence before the ministry at the time of the Reconsideration Decision included: (a) Reasons for Request for Reconsideration, handwritten note from appellant and appellant's mother, 3 pages, dated March 5, 2009; (b) Persons with Disabilities Designation Application, (i) Applicant Information, hand written note, 3 pages, dated November 28, 2008, (ii) Physician Report, 5 pages, dated November 27, 2008, (iii) Assessor Report, 8 pages, dated November 27, 2008; (c) Medical Report – Employability, 1 page, dated November 27, 2008.

At the Hearing, the appellant provided evidence that he has confirmed, by a prescribed professional, the diagnosis of degenerative disc disease (back) and sciatica. The appellant gave evidence that he also suffers from numbness in his hands and leg which causes him to fall down. The appellant stated that he has assistance from his mother to complete shopping, carry things, get in and out of the shower, help with laundry and making up his bed. The appellant stated that he now uses 2 crutches to walk with as they prevent him from falling and that he likes the support that the crutches give him. The appellant stated that the crutches have not been prescribed by a medical practitioner. The appellant stated that his medical practitioner has not prescribed any pain medication except for a muscle relaxant when needed. The appellant stated that he feels that his condition is changing and that he needs more assistance and is becoming more dependent on others for help.

The prescribed professional who completed both the Physician's Report and Assessor's Report stated that the impairment of the degenerative disc disease and sciatica is severe and that the appellant, who lives with family, requires periodic or continuous assistance with climbing stairs, standing, lifting, carrying and holding and getting in and out of vehicles. The prescribed professional also states that the appellant is independent in other daily living activities and that his impairment does not directly impair the appellant's ability to perform daily living activities although the prescribed professional also states that the appellant must limit what he does because of the (chronic) pain. The prescribed professional does not record any assistance provided through the use of Assistive Devices.

The panel finds: (a) the appellant lives with his family; (b) the prescribed professional has confirmed that the degenerative disc disease is severe and that the appellant has chronic pain; (c) the prescribed professional has not prescribed medication for pain management with the exception of a muscle relaxant when required; (d) the appellant is requires periodic or continuous assistance in climbing stairs, standing, lifting, carrying and lifting and getting in and out of vehicles; (d) the prescribed professional confirms that the appellant is independent and requires no assistance or supervision in other DLA's; (e) the appellant uses crutches but crutches have not been prescribed by a prescribed professional.

ATTACH EXTRA PAGES IF NECESSARY



## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is whether the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment and that his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that the appellant does not require help to perform DLA. The ministry determined that the age requirement was met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

The ministry's position is that the evidence does not establish the existence of a severe physical or mental impairment that, in the opinion of a prescribed professional, significantly restricts DLA or necessitates help with DLA.

The appellant's position is that the EAPWDA should be interpreted in a large and liberal manner and that the evidence establishes that the appellant has a severe impairment that significantly restricts her ability to perform DLA to the point that he requires the significant help of another person.

Regarding the existence of a severe physical impairment, the panel finds that the evidence establishes that the appellant has disc degeneration disease (back) and sciatica, in chronic pain and that the condition is severe. Therefore, the panel finds that the ministry did not reasonably conclude that the evidence does not establish a severe physical impairment.

Respecting the existence of a severe mental impairment, the evidence establishes that there is no submitted evidence by the prescribed professional regarding a mental impairment. Therefore, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish the existence of a severe mental impairment.

[REDACTED]

As a severe physical impairment has been established, the legislative requirement of section 2(2) of the EAPWDA has been met.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the Physician and Assessor's Reports which established that the appellant requires periodic or continuous assistance climbing stairs, standing, lifting, carrying and lifting and getting in and out of vehicles. The panel finds that while the evidence establishes that the appellant's impairments impact his ability to perform some DLA, the appellant is able to perform the majority of DLA, including those relating to meals, personal finances, medications, and social functioning, independently. Therefore, the panel finds that the ministry reasonably concluded that the evidence does not establish a direct and significant restriction, in the opinion of a prescribed professional, of the appellant's ability to perform DLA as required by section 2(2)(b)(i) of the EAPWDA.

In determining whether the ministry reasonably concluded that the appellant does not require help with DLA, the panel finds that as the evidence of a prescribed professional establishes that the appellant is independent with the majority of DLA, the appellant's need for the significant help or supervision of another person has not been established. The panel confirms that the appellant was using crutches as an assistive device for mobility, however, no assistive devices were prescribed by the prescribed professional, and as the panel finds that the evidence does not establish a direct and significant restriction to DLA's, the panel finds that the ministry reasonably determined that the requirement for help to perform the DLA's under section 2(2)(b)(ii) of the EAPWDA has not been met.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.