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PART C – DECISION UNDER APPEAL

In the reconsideration decision of March 4, 2009, the appellant was denied status as a person with disabilities (PWD) because the ministry found that he did not have a severe mental or physical impairment, a prescribed professional does not confirm that his impairment directly and significantly restricts his ability to perform daily living activities, either continuously or periodically for extended periods, and he did not require help to perform daily living activities.

PART D – RELEVANT LEGISLATION

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

The evidence before the ministry consisted of a Physician's Report (PR) dated December 8, 2008, an Assessor's Report (AR) dated December 12, 2008, a Supplemental Medical Opinion (SMO 1) dated February 18, 2009 completed by the physician, another Supplemental Medical Opinion (SMO 2) dated March 16, 2009 completed by the physician, and a undated Reconsideration Request from the appellant's legal advocate.

The PR states that the appellant suffers sciatic nerve injury/paralysis and lower back pain with associated leg pain. The physician comments that "due to his injury and chronic consequences and his right leg and back, this patient is limited in his activity level with his functioning for walking, lifting, basically all of his loco motor abilities". The physician also notes that the appellant requires a brace on his right leg due to a dropping foot, a protective/supportive brace to stabilize the left ankle, custom made orthotic shoes and a back brace.

In the PR the physician identifies deficits in lifting with no limitations on walking, climbing stairs, sitting, communication and cognitive and emotional functioning. The physician notes restrictions in personal self care, basic housework, and mobility inside and outside the home with no restrictions on meal preparation, management of medications, daily shopping, use of transportation, management of finances and social functioning. The physician also comments that "the patient has a chronic/continuous disability in regards to his leg and back injury and he needs assistance and his condition will not improve".

In the AR, the assessor identifies significant deficits in the appellant's ability to communicate, in his mobility and physical ability and in his cognitive and emotional functioning. The assessor notes that the appellant requires continuous assistance for the majority of his daily living activities. The assessor states that the appellant receives assistance from his girlfriend and from a community assistance group.

In the SMO 1, the physician comments that the appellant is "unable to walk at all without the aid of bilateral lower leg custom made braces (artificial foot orthotic). This is a permanent condition with no possibility of improvement".

In the SMO 2, the physician notes that when he indicated that the appellant was independent he meant that he was able to live outside a health facility and that "he will never be independent in the sense that his conditions are severe and, as a result, significantly restrict his ability to manage daily living activities. It takes (appellant) much longer to complete tasks and he must continuously modify his actions to fit his ability level. His lifting ability is restricted, his mobility is limited and slow (walking can be painful even with the use of assistive devices), showering is challenging as stability is impaired and his episodes of pain are often debilitating".

The appellant is a fairly young adult who resides by himself and receives assistance from his ex-girlfriend and his landlord for some of his daily living activities. At the hearing, the appellant explained the functions of the assistive devices that he uses for his feet and legs.

The panel admitted this oral evidence pursuant to section 22(4) of the EAA in support of the evidence that was before the ministry.

PART F – REASONS FOR 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.

The ministry found that the appellant meets criteria 1 and 3 at reconsideration; he is over the age of 18 and his medical practitioner has confirmed that his condition will continue for at least 2 years.

The ministry's position at the hearing is that the appellant does meet criteria 2 given the circumstances of his physical impairment and that he does meet criteria 4 and 5 based on the evidence of the prescribed professional provided in the PR, SMO 1 and SMO 2.

The appellant's position is that he is eligible for PWD status due to his severe physical impairment and the resulting restrictions.

Based on the whole of the information provided by the physician, the panel finds that it was not reasonable for the minister to conclude that the appellant does not suffer from a severe physical or mental impairment. The physician has very clearly stated in the PR that the appellant suffers from "chronic impairment" and confirms in the SMO's his opinion that the appellant has a severe physical impairment. The physician further confirms that the appellant is significantly restricted in his ability to manage daily living activities and requires assistive devices to perform these activities.

Based on the evidence provided by the prescribed professionals, the ministry did not reasonably conclude that the appellant did not require help with daily living activities. The PR, AR and SMO's all provide evidence that the appellant requires assistance with his daily living activities in the form of assistive devices or the significant help of another person.

In SMO 2 the physician indicates that he found the wording PWD application confusing. He goes on to explain in detail how the appellant requires assistive devices for basic mobility and he also notes that when he referred to the appellant as being "independent" that was only in the sense that he could

live outside a health facility. He also indicated that the appellant's condition significantly restricts his ability to manage daily living activities.

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