



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Minister's reconsideration decision of January 9, 2009 which denied the Appellant's request for the Persons with Disabilities (PWD) designation. The ministry held that the Appellant did not meet all of the five criteria listed in Sections 2(2) and 2(3) of the Employment and Assistance for Persons with Disabilities Act, which must be met to be approved.

The ministry found that:

1. The Appellant met the age requirement.
2. The Appellant's medical practitioner confirmed that the Appellant's impairment is likely to continue for at least two years, however,
3. The ministry was not satisfied that the Appellant had a severe mental or physical impairment which results in significant restriction of his daily living activities.
4. The Appellant's 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 by a severe impairment.
5. The Appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, that the Appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

EAPWDA Employment and Assistance for Persons with Disabilities Act, section 2
EAPWDR Employment and Assistance for Persons with Disabilities Regulation 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 the ministry included the following: (1) a Request for Reconsideration dated November 28, 2008 with two Medical Employability Reports dated November 29, 2007 and September 18, 2008; (2) a Person with Disabilities Designation Application dated October 10, 2008; (3) a letter of refusal of PWD designation from the ministry dated November 20, 2008 with assessment documents attached.

The Appellant submitted to the panel a written submission, a one page definition (from online 'Lectric Law Library') defining an "Individual With a Severe Disability" and an undated letter from his girlfriend outlining some of the assistance that the Appellant requires. The letter was accepted as evidence and it was noted that the Appellant's girlfriend was not a prescribed professional.

The Appellant appeared alone. The Appellant stated that the doctor completed the assessment after seeing him about 8 times. He stated that the doctor had not asked for his input when he completed the questionnaire. In his assessment, the doctor indicated that the Appellant is capable of managing most of his daily living activities.

The Appellant did not feel that he had a mental impairment. He stated that the doctor did not understand or document the true severity of his physical limitations. The Appellant noted that he has requested additional hospital and doctor's reports but did not receive them.

The ministry stated that at the time of the reconsideration, the evidence supported that the Appellant was able to perform many of his daily living activities. The ministry suggested that an advocate may be able to assist the Appellant in obtaining the reports required to meet the criteria outlined in the legislation.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is for the panel to determine if the ministry's decision to deny the Appellant's request for the Persons with Disabilities (PWD) designation was reasonable according to the evidence before the ministry.

The legislation considered was the EAPWDA section 2 and EAPWDR section 2. All five criteria described in the legislation must be met in order for the Appellant to qualify.

The Appellant's position was that he meets all the criteria required under the act and regulations and that the doctor did not provide accurate and complete information required by the ministry in order for the ministry to accept his application for a PWD designation. The Appellant emphasized in his submission that he meets the requirements.

Although the ministry agreed that the Appellant met the age requirement and that a medical practitioner confirmed that the Appellant's impairment is likely to continue for at least two years, they were:

- not satisfied that the Appellant had a severe mental or physical impairment which results in significant restriction of his daily living activities,
- that a prescribed professional did not confirm that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods by a severe impairment and,
- a prescribed professional does not confirm that as a result of direct and significant restrictions, that the Appellant requires help to perform daily living activities.

Therefore the ministry position was that the Appellant did not meet all the criteria to be approved for a PWD designation.

The panel determined that the evidence reasonably supported the ministry decision. The doctor's evaluation acknowledged the Appellant's medical problems but it did not indicate that these problems severely impacted the Appellant's ability to perform most of his daily living activities. The panel confirms the ministry reconsideration decision in accordance with the Employment and Assistance Act sections 24(1)(a) and 24(2)(a)

ATTACH EXTRA PAGES IF NECESSARY