

PART C – DECISION UNDER APPEAL

This is an appeal of Reconsideration Decision [REDACTED] issued on January 21, 2009. The Reconsideration Officer confirmed the Adjudicator's October 30, 2008 decision that held the Appellant did not qualify for designation as a "person with disabilities" ("PWD") under section 2(2) of the *Employment and Assistance for Persons with Disabilities Act*. The Reconsideration Officer determined that while the Appellant met the minimum age requirement (18 years) and had a "severe physical impairment" that was likely to continue for at least 2 years, the Appellant nonetheless did not qualify for PWD designation because the medical evidence did not indicate that the Appellant's physical impairments significantly restricted the Appellant's ability to perform daily living activities either continuously or periodically for extended periods and that he therefore did not require help to perform those activities.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act ("EAPWDA"), section 2(2)
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), section 2(1)(a)

PART E – SUMMARY OF FACTS

The evidence before the Reconsideration Officer included two reports (Physician Report and Assessor Report) both of which were prepared by the Appellant's treating medical doctor as well as a report prepared by the Appellant's advocate, a staff member with the Together Against Poverty Society. The Physician Report indicates that the Appellant suffers from several medical ailments including emphysema and chronic back pain due to a 1982 workplace accident. In addition, the Appellant's evidence before the panel is that he has hepatitis C. The Appellant also suffered a stroke in 2005 that left him with right hand weakness. The Appellant does not have any cognitive or emotional impairment. The Appellant's medical doctor reported that the Appellant was "independent" in terms of his personal self-care, meal preparation, shopping, mobility and financial management but that he required continuous assistance with housekeeping. In the Assessor Report, the doctor indicated that the Appellant was independent with respect to all itemized indicia of "Personal Care", Shopping", Meal planning, preparation and cooking, personal finances, medication management and "Transportation" but that he required help with basic housekeeping. The doctor, in the Assessor Report, indicated that the Appellant could walk indoors and outdoors and lift and carry items but that these tasks took significantly longer to complete due to "short[ness] of breath on exertion".

At the hearing, the Panel received as evidence in support of the material that was before the Reconsideration Officer (and without objection from the Ministry's representative) a further brief report from the Appellant's medical doctor indicating that the Appellant was unable to pursue gainful employment and that he was suffering from a chronic disability. This report did not indicate whether or not the Appellant's condition affected his daily living activities. Although the panel accepted the supplementary medical report, the Panel noted that the Appellant's ability to obtain gainful employment is not an issue that is before us.

During his testimony before the Panel, the Appellant indicated that he suffered from shortness of breath and that while this condition affected his daily living activities, he was able to prepare his own meals, drive his car (he does not have a "disabled" car tag), shop for groceries and look after his own personal bathing needs. The Appellant stated that he required over an hour to bathe and clothe himself in the morning. He uses a "puffer" and other oral medications and they provide symptomatic relief from his emphysema. The Appellant has a cane but does not use it.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is whether the Ministry's reconsideration decision was "reasonably supported by the evidence" or was "a reasonable application of the applicable enactment in the circumstances of the person appealing the decision": *Employment and Assistance Act*, section 24(2). Section 2(2) of the *EAPWDA* specifies several criteria that must be satisfied before a person may be given a PWD designation. The Ministry concluded that the Appellant met the age requirement and had a severe physical impairment that was likely to continue for at least two years. However, the Ministry, based on the information provided by the Appellant's medical doctor, determined that the Appellant's physical impairments did not directly and significantly restrict the Appellant's ability to perform daily living activities either continuously or periodically for extended periods and that he did not require help to perform those activities (see *EAPWDA*, section 2(2)(b)). The relevant "daily living activities" are set out in section 2(1) of the *EAPWDR* and include such things as meal preparation, shopping, managing personal finances, personal hygiene and taking medications, using public or personal transport and general mobility.

The Appellant's advocate submitted that given the Appellant's health problems, it is reasonable to assume that his daily living activities are significantly affected. The Appellant's advocate suggested that the Panel should discount the medical evidence before it and that the Ministry ought to have made further follow-up inquiries of the Appellant's doctor prior to making a determination regarding his PWD status. We are not persuaded that there is a statutory duty requiring the Ministry to, in essence, conduct an independent investigation into an applicant's medical condition. The Ministry relied on the medical information submitted on the Appellant's behalf and it is important to note that section 2(2)(b) of the *EAPWDA* states that a PWD designation can only be made where a "prescribed professional" (such as a treating physician) provides an opinion that the applicant's ability to perform daily living activities is directly and significantly restricted either continuously or periodically for extended periods.

While there is no doubt—and indeed, the Ministry concedes—that the Appellant has a severe physical impairment, a PWD designation is predicated on the impairment directly and significantly affecting the Appellant's ability to carry out certain prescribed daily living activities. This latter determination must be supported by the opinion of a prescribed professional. In this case, the prescribed professional's reports indicate that the Appellant apparently does not have the independent ability to clean his home (a single wide trailer) and is assisted in that regard by a friend who cleans his residence about once every two weeks. However, in all other respects the Appellant appears to be self-sufficient although some activities may take him somewhat longer to complete (e.g., bathing). The Appellant acknowledges (consistent with his own treating physician's observations which are based on a 4-year treatment history and on a dozen separate office visits within the last 12 months) that he can manage his own medication intake, prepare his own meals, bathe himself, drive himself to the store and do his grocery shopping. The Appellant does not use any assistance devices. He cannot walk for extended distances but is mobile since he has no difficulty driving.

The evidence before us is that the Appellant has some physical limitations. On the other hand, we are unable to conclude, based on the totality of the evidence, that the Appellant's physical limitations directly and significantly restrict

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his ability to undertake the various daily living activities itemized in section 2(1)(a) of the *EAPWDR* and that as a result of his physical impairments he requires help to perform those activities. In our view, the Ministry's decision to confirm the initial denial of PWD status was reasonable in all of the circumstances and, accordingly, we confirm the Ministry's decision.