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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In the reconsideration decision of May 1, 2009, the appellant was denied Persons with Disabilities (PWD) designation by the ministry. Specifically the ministry stated that they were not satisfied that the appellant had a severe physical or mental impairment. The ministry finds that the prescribed practitioner does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, section 2.

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 appellant applied for Persons with Disabilities designation as a result of an accident that occurred several years ago resulting in some physical injuries to him.

The evidence before the ministry included letters from two doctors and an occupational therapist, all of whom qualify as “prescribed professionals” under Section 2(2) of the Employment and Assistance for Persons with Disabilities Regulation. The appellant shared that these letters were written for an insurance claim as a result of his accident. As no Physician Report or Assessor Report was submitted by the appellant, evidence was taken from the letters of the prescribed professionals mentioned above. There was no specific information in any of the letters to confirm that the appellant had a severe physical or mental impairment nor was there any information to suggest that the appellant’s impairment directly or significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods. Further, there was no clarification on whether an assistive device is currently required by the appellant or that the appellant requires the significant help or supervision of another person or the services of an assistance animal to help him perform a daily living activity.

The appellant stated that he felt that the required Physician Report and Assessor Report were unnecessary repetition as he felt that his condition had been clearly and thoroughly described by the doctors and occupational therapist in their letters prepared for his insurance claim.

The ministry explained what was required for Persons with Disabilities designation and offered to find the appellant assistance to fill out the application properly for resubmission.

The Panel did not receive any new evidence in support of the appellant’s application for Persons with Disabilities designation.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's decision to deny the appellant Persons with Disabilities designation claiming that they were not satisfied that the appellant had a severe physical or mental impairment. The ministry further found that the prescribed practitioner does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help to perform daily living activities.

In order to be designated as a person with disabilities, the following criteria must be satisfied:

EAPWD Act, Section 2 (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) Periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

EAPWD Act, Section 2 (3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or the services of an assistance animal.

The ministry's position is that the appellant does not satisfy all of the criteria above in order to qualify for Persons with Disabilities designation. The ministry found that the appellant satisfies the age requirement (18 yrs) and that the appellant's medical condition is likely to continue for at least 2 years. The ministry is not satisfied that the appellant has a severe physical or mental impairment. Further, the ministry finds that the prescribed practitioner does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help to perform daily living activities.

The appellant argues that the letters submitted by the two doctors and the occupational therapist contained enough information for the ministry to grant him Persons with Disabilities designation.

ATTACH EXTRA PAGES IF NECESSARY

The Panel, in their review of the letters submitted by the two doctors and the occupational therapist, found that there is no evidence to show that the appellant has a severe physical or mental impairment. Further, the Panel finds that that the prescribed practitioner does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help to perform daily living activities. The Panel further noted that the information submitted by the prescribed practitioner does not address the legislation with respect to daily living activities and that the appellant's submission did not present any new evidence in support of his application for Persons with Disabilities designation.

The Panel determines that the ministry's reconsideration decision was reasonably supported by the evidence and that it was a reasonable application of the legislation in the circumstances of the appellant. The Panel confirms the decision of the ministry.