

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated September 22<sup>nd</sup>, 2009, which held that the appellant did not meet 3 of the 5 statutory requirements for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant had an impairment that was likely to continue for at least 2 years. However, the ministry found that the appellant did not have a severe physical or mental impairment, and that the material submitted by a prescribed professional did not establish that the appellant's ability to perform daily living activities (DLA) are directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that, as DLA are not significantly restricted, it could not be determined that the appellant required the significant help or supervision of another person or the use of an assistance animal or assistive device 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 evidence before the ministry at the time of reconsideration included: the original PWD application consisting of a Physician Report and an Assessor Report, both signed by the appellant's physician of 5 months, on May 12<sup>th</sup>, 2009, and a Self-report signed by the appellant on June 8<sup>th</sup>, 2009.

In the Physician Report, the appellant is diagnosed with chronic pain in lower back, ankles and hands with an onset date of April 2003. The physician writes that the appellant has suffered an apparent disc prolapse and a fracture to the left ankle that required 3 surgeries as a result of a motor vehicle accident in April 2003 as well as chronic pain in both hands due to multiple fractures. The physician writes that the appellant's impairment is likely to continue for two years or more and is "likely permanent and ?progressive". With respect to functional skills, the appellant is reported to be able to walk 1 to 2 blocks unaided on a flat surface, climb 5+ steps unaided, remain seated for less than 1 hour, communicate with no difficulty and has a limitation of 2 kg for the purposes of lifting.

In the Assessor Report, the appellant's ability to communicate is reported as "good". In terms of mobility and physical ability, the appellant is reported to be independent in relation to standing. He is also reported as independent but taking significantly longer than typical (with no further explanation) in terms of walking indoors and outdoors. With respect to climbing stairs, the appellant is reported as independent, with periodic assistance from another person required and taking significantly longer than typical. Continuous assistance from the appellant's roommate is indicated for lifting and periodic to continuous assistance from the appellant's roommate is indicated for carrying and holding. With respect to DLA, the appellant is reported to be independent in 14 of 28 applicable listed activities, independent but takes significantly longer than typical in 6 of 28 applicable listed activities, is independent with periodic assistance from another person required and takes significantly longer than typical in food preparation, is independent requiring periodic assistance from another person in cooking, requires periodic assistance from another person in getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. The appellant requires periodic to continuous assistance from another person in carrying purchases home and requires continuous assistance from another person in performing Laundry and basic housekeeping activities.

In his Self-report the appellant writes of severe pain in his back, hands and ankles, with some days being unable to get out of bed as well as being unable to stand for long periods due to resulting back spasms. In a further undated and unsigned Self-report, the appellant writes of his inability to get out of bed on most days, his inability to "take care of myself" and requirement for significant help.

A further letter on behalf of the appellant, dated September 2<sup>nd</sup>, 2009 from a friend, and included in the appellant's reconsideration request, indicates that, in the author's opinion, the appellant's physical impairment has increased in the past year, that she has performed numerous assistive activities for the appellant.

At the hearing the appellant stated that he was a relatively new patient to the Physician who filled out his Physician Report and Assessor Report, and that the physician may not have been aware of the

full facts of his disability. He stated that his previous physician would likely have been more appropriate and able to provide much more detailed information.

At the hearing the ministry reviewed the legislative criteria for PWD status and stated that the information provided by the appellant's physician in the PWD application was insufficient to meet 3 of the 5 statutory requirements of the legislative criteria.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issues under appeal are whether the ministry reasonably concluded that the appellant did not meet the criteria for PWD designation and more specifically; does not have a severe mental or physical impairment, that his impairment does not significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods and that the appellant does not require the significant help or supervision of another person to perform DLA restricted by his impairment. The ministry determined that age requirement had been met and that the appellant's physician had confirmed that his impairment is likely to continue for at least 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, that, pursuant to section 2(2)(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, directly and significantly restricts the persons ability to perform daily living activities (DLA) either continuously or periodically for extended periods and as a result of those restrictions the person must require help to perform DLA.

Section 2(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shop for personal needs, using public or personal transportation, performing housework to maintain one's place of residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(b) adds two additional activities for a person with a severe mental impairment, specifically making decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. Section 2(3)(b) of the EAPWDR 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.

The appellant's position is that he has a severe physical impairment which significantly impacts his ability to perform DLA to the point of requiring assistance. To emphasize this point the appellant states that on some days he has difficulty getting out of bed due to pain in his back, hands, and ankles.

The ministry position is that the information provided by the appellant's physician does not establish that the appellant's impairment significantly restricts his ability to perform DLA and that he does not require any assistive devices, the significant help or supervision of another person or the services of an assistance animal..

Regarding the existence of a severe impairment, the panel notes that the appellant's physician has referenced the appellant's pain, in the PWD application, as being "chronic" as opposed to severe and speaks of the possibility of surgery "when pain gets worse". Nowhere in the Physician Report or Assessor Report , both completed by the appellants current physician, is there an indication of a severe pain level suffered by

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the appellant. Furthermore, while the appellant's physician indicates some limitation of functional skills, none of the notations indicate a severe limitation. Therefore the panel finds the ministry reasonably determined there was no severe impairment.

Regarding the issue that the appellant's impairment directly and significantly impacts his ability to perform DLA, the panel finds that the PWD application indicates that the appellant is independent in the majority of DLA, albeit some categories take significantly longer to perform than typical, however, there is no indication how much longer that may be. Regarding the appellant's need for continuous assistance in performing DLA, this need, is noted in only the basic housekeeping and laundry DLA category. Periodic assistance is noted as required in getting in and out of vehicles, using public transit and using transit schedules and arranging transportation, and is also evidenced in the letter from the appellants friend

Based on this evidence the panel finds that it was reasonable for the ministry to conclude that the appellant's ability to perform DLA was not directly and significantly restricted either continuously or periodically for extended periods and therefore does not meet the requirements of section 2(2)(b)(i)

Regarding the need for help performing DLA, the panel notes that there is no evidence that the appellant requires the use of an assistive device or the services of an assistance animal. There is insufficient evidence to conclude that the appellant needs the significant help or supervision of another person, therefore, it was reasonable for the ministry to find that the appellant did not meet this criteria.

After considering all of the evidence, the panel confirms the ministry's reconsideration decision as being reasonably supported by the evidence.