



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration decision, dated April 22 2009, stated that the Appellant was not eligible for a Person with Disabilities designation as the Minister is not satisfied that the Appellant has a severe mental or physical impairment, and that in the opinion of the prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically over extended periods, and that as a result of those restrictions, the Appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

- EAPDA Employment and Assistance for Persons with Disabilities Act Section 2

- EAPDR Employment and Assistance for Persons with Disabilities Regulation Section 2

PART E – SUMMARY OF FACTS

The Appellant did not attend the hearing. Proof of delivery of the Notice of Hearing indicates the notice was successfully delivered on May 15, 2009 therefore the hearing proceeded according to Section 86 (b) of the EAR (Employment and Assistance Regulation).

The evidence before the Ministry in the reconsideration decision was that the Appellant's medical practitioner diagnosed peripheral vascular disease, ischemic heart disease and severe COPD which limited the Appellant's functioning as a result, however the information in the application did not demonstrate that these limitations resulted in a severe physical impairment.

In assessing basic functional skills, the prescribed professional indicates that the Appellant can walk 1-2 blocks and climb 5 or more steps unaided; lift 5-15 pounds and has no limitations with remaining seated. The prescribed professional indicated that the Appellant takes significantly longer with walking indoors and outdoors and climbing stairs but does not describe by how much longer and without that information the Minister could not determine that the extra time represents a significant restriction. The prescribed professional noted that the Appellant requires periodic assistance with lifting, holding and carrying. The prescribed professional further, in his narrative, reports that the Appellant suffers from severe mobility issues due to severe peripheral vascular disease in his legs enabling him to only walk short distances, and severe COPD which limits his physical exertion.

The prescribed professional indicates that the Appellant requires periodic assistance and takes significantly longer going to or from stores and carrying purchases home, and has difficulty walking to the bus stop but also indicates that the Appellant is independently able to perform all other daily living activities related to personal self care, basic housekeeping, shopping, meal preparation, management of finances and medications, and utilizing personal and public transportation facilities.

The Appellant, in his written request for reconsideration, states he feels his physical condition is being ignored because, even though he is not in a wheelchair, his disability limits his ability to "walk unlimited" and to be able to work and function without having to stop and rest constantly. He states that he has to rely on family and friends to get him to doctor's appointments and normal functions. He states that he can no longer participate in golf. He states that he has no problem taking care of himself but his mobility situation is the factor as he is now totally reliant on family and friends to get him around when it is required.

There is no dispute about the evidence nor about the information provided by the medical practitioner nor in the prescribed professional's report. No additional evidence was submitted. The Panel accepted as fact all the medical evidence presented to it.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the Minister was reasonable to deny the Appellant with the Person with Disabilities designation.

The legislation requires that the Minister may designate a person as a Person with Disabilities when the person is at least 18 years of age, has satisfied the Minister that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for more than two years and in the opinion of the prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically over extended periods, and that as a result of those restrictions, the person requires help to perform daily living activities.

The Minister finds that the Appellant has met the age requirement and, in the opinion of a medical practitioner, has a condition that will continue for more than two years, but finds that there is insufficient evidence for the Minister to find that the Appellant has a severe physical impairment and that there is insufficient evidence, in the opinion of the prescribed professional, that the impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically over extended periods, and that as a result of those restrictions, the person requires help to perform daily living activities.

The Appellant argues that he is severely limited in his mobility and that his disability limits his ability to “walk unlimited” and to be able to work and function without having to stop and rest constantly. He states that he has to rely on family and friends to get him to doctor’s appointments and functions. The Panel considered the three parts of the designation that the Minister found that the Appellant did not meet. First was the existence of a severe physical impairment. The prescribed professional, in his narrative, notes the Appellant suffers from severe mobility issues due to severe peripheral vascular disease to his legs and is further limited in his physical exertion due to severe COPD and overall the Appellant is a severe vasculopath as well as having severe COPD. The Panel finds evidence that the Appellant suffers from a severe physical impairment and as such, it was unreasonable for the Minister to find that there was no severe physical impairment.

Second, the Panel examined the evidence from the prescribed professional about whether the severe impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically over extended periods. The prescribed professional does indicate that the Appellant has severe mobility issues but in the assessor’s report, indicates that the Appellant has a good ability to communicate, is independent in mobility and physical functioning adding that the Appellant takes significantly longer walking indoors or outdoors or climbing stairs, and requires periodic assistance lifting, carrying and holding. The prescribed professional assesses the Appellant as being independent on all personal care activities, basic housekeeping and shopping, but taking significantly longer going to or from stores and carrying purchases. The prescribed professional indicates the Appellant is independent in all meal activities, paying rent and bills, medication activities and all transportation with the notation that it is hard for the Appellant to walk to the bus stop. The Panel finds that there is no evidence that the Appellant’s severe physical impairment directly and significantly restricts his ability to perform his daily living activities either continuously or periodically over extended periods of time. The Panel finds the Minister’s decision to be reasonable. Third, as the Panel did not find the physical impairment directly and significantly restricted the Appellant’s ability to perform daily living activities, it could not find that as a result of these restrictions, the Appellant requires help to perform daily living activities.

The Panel finds that the Minister was unreasonable in finding that a severe physical impairment did not exist but was reasonable in finding that there were no direct and significant restrictions on the

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Appellants daily living activities and therefore, as a result of those restrictions, the Appellant did not require help to perform daily living activities. The Panel therefore found the Minister's decision to deny a Person with Disabilities designation was reasonably supported by the evidence and confirms the Ministry's decision.