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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration decision, dated October 29, 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)

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

The evidence before the Ministry in the reconsideration decision was that the Appellant's medical practitioner diagnosed severe degenerative disc disease, lumbar spine sciatica and spondylolisthesis, learning disability, celiac disease and substance use disorder. The medical practitioner noted the Appellant's restricted ability to lift and engage in repetitive bending, limited tolerance to sitting and standing, and nocturnal pain disrupts sleep, chronic pain syndrome has persisted for years and non surgical situation. A specialist's report from an orthopedic surgeon listed the Appellant's own description of symptoms as well as excessive tenderness to light touch mid thoracic spine, altered sensation primarily in L4, with an overall impression of mechanical lower back pain, some degenerative disc disease, grade 1 spondylolisthesis and no significant nerve impairment. Imaging was reviewed including a CT scan showing some mild disc bulging noted laterally and L4-5 shows some mild disc bulging and grade 1 spondylolisthesis at L5-S1 secondary to pars defect with some mild bulging on the right side. The medical practitioner completed the assessor's report and noted limited tolerance for physical activity, prone to falling in shower without railings, learning disability, uses a cane to walk indoors or outdoors, needing periodic assistance lifting and carrying. The assessor states the Appellant is independent in personal care with the note that he takes significantly longer and is limited by repetitive bending and requires railings for shower and toilet. The Appellant needs periodic assistance for basic household tasks and carrying purchases home, with a note that it takes significantly longer to shop and assistance is needed carrying grocery bags. Meals, paying rent and bills and medications are all listed as independent with notation that food prep, cooking and all transportation takes significantly longer. The assessor notes assistance is needed by friends and family with the note "moral support." Assistive devices lists that the Appellant uses a cane and toileting and bathing aids and the comment that he uses a cane and railings and needs a hospital bed. In additional information, the medical practitioner notes he is overwhelmed by chronic pain leading to fluctuating mood.

The Appellant, in his written request for reconsideration, includes a note from his medical practitioner that confirms the Appellant uses his cane for all mobility including standing and that walking takes him 4-5 times longer, needs help carrying or lifting more than ten pounds, needs help tying shoes when in severe pain with aggravation of sciatica, that he is unable to lift and carry a laundry basket or bend for the dryer, that he needs help to perform household tasks as bending is difficult and painful, that his mother often helps him with shopping, and needs help preparing meals particularly when his sciatica symptoms intensify.

The Appellant states that he has a physical not a mental impairment, uses a cane and railings, is often sleepless, is in constant pain but has better and worse days but more often than not, is in pain. His mother testified that she often sees him in pain and must assist him with cooking and shopping and cleaning, and that he is unstable on his feet.

The Ministry states that the reports lacked the information necessary to support a continuous need for assistance in his daily living activities. The Ministry noted many daily living activities were listed as independent. Duration was not addressed where it was noted that periodic assistance was needed.

There is no dispute about the evidence nor about the information provided by both the physician's and the assessor's reports. The specialist's report did not note the same level of severity that the medical practitioner's report noted, but the specialist's report's information under "imaging" supported what both the medical practitioner and appellant said. The Panel accepted as fact all the medical evidence presented to it, supported by both the Appellant's and witness' testimony.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry was reasonable to deny the Appellant a Person with Disabilities designation. The Ministry found that the Appellant has met the age requirement and, in the opinion of a medical practitioner, has a condition that will continue for at least 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 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 at least 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 Appellant argues that the information from his medical practitioner indicates a severe physical condition that significantly and continuously restricts his daily living activities, and that as a result of these restrictions, requires the use of a cane, railings and help from his mother and family. He states he is in almost constant pain, has difficulty walking and performing daily living activities, and takes 4-5 times longer to do many daily tasks.

The Panel considered the three parts of the designation that the Ministry found that the Appellant did not meet. First was the existence of a severe physical impairment. The medical practitioner states the Appellant has severe degenerative disc disease, and suffers from chronic pain and nocturnal pain syndrome. The Panel finds evidence that the Appellant suffers from a severe physical impairment and as such, it was unreasonable for the Ministry 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 takes 4-5 times longer to perform many daily living activities, personal care, shopping, meal preparation and all transportation, as a result of the physical impairment which causes pain and restricts bending and walking. Due to the number of restricted DLAs and the fact the Appellant takes 4-5 times longer to perform them, the Panel finds it was unreasonable for the Ministry to conclude he did not suffer continuous restrictions. The Panel finds that the evidence does support 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, therefore the Panel finds that the Appellant is directly and significantly restricted in DLAs.

Third, the evidence from the assessor's report confirms that as a result of restrictions to the Appellant's daily living activities, the Appellant requires the use of a cane, railings and significant help from another person.

The Panel therefore rescinds the decision of the Ministry as it was not reasonably supported by the evidence.