



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

On February 19, 2009, the Ministry rendered a reconsideration decision stating that the appellant does not meet the legislative criteria to qualify as a Person with Disabilities (PWD). Specifically, the reconsideration decision determined the appellant has not satisfied the Minister that he has a severe mental or physical impairment; his prescribed professional has not confirmed his impairment significantly and directly restricts his ability to perform his daily living activities either continuously or periodically for extended periods; and his prescribed professional has not confirmed that, as a result of his restrictions, his daily living activities require significant help or supervision.

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

The panel accepted and considered all the evidence provided in the record of appeal and the oral evidence provided by the two parties.

The panel noted that the appellant's prescribed professional diagnosed the appellant with brain damage from traumas and depression.

The prescribed professional indicates that the appellant suffers from headaches, indecision, and social isolation and depression. He also notes that the appellant experiences deficits to his cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation, and attention/sustained concentration. The prescribed professional indicates an overall minimal to moderate impact on the appellant's daily functions.

In assessing the appellant's mobility and physical ability, the prescribed professional indicates that the appellant's functioning is independent in all activities. The prescribed professional further documents that the appellant can walk 4 + blocks and climbs 5+ steps unaided and has no limitations with lifting.

In written and in oral testimony the appellant states that ever since he was hit over the head with a baseball bat and suffered permanent brain damage, he has been suffering with severe migraine headaches and dizzy spells which affects his coordination and eyesight and because of the injuries he should have the PWD designation. His medical practitioner has prescribed Tylenol 3 for pain and Adivan for anxiety.

The panel also heard testimony from the appellant that he was able to drive a vehicle to the hearing and frequently drives but if he feels dizzy he usually pulls over to the side of the road. He also stated that if he had known that he could bring witnesses to the hearing he would have. He said that if he had his witnesses here they would say that I get dizzy, vomit but that I am a nice person. He also volunteered the information that he is on PPMB designation and that he lives with his common-law wife who has a PWD designation.

The Ministry restated the appeal record in which the Minister is not satisfied that the appellant has a severe physical or mental impairment and therefore does not qualify as a PWD.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a Persons with Disabilities (PWD) designation as per Section 2 (2) and (3) of the Employment and Assistance for Persons with Disabilities Act. (EAPWDA).

In order to qualify for PWD Designation under section 2 of the EAPWD Act and section 2 of the EAPWD Regulation, an applicant must meet all of the following criteria:

1. They must be 18 years of age.
2. A medical practitioner must have confirmed that the impairment is likely to continue for at least two years.
3. The Minister must be satisfied that they have a severe mental or physical impairment.
4. A prescribed professional must have confirmed that the severe impairment directly and significantly restricts their ability to perform daily living activities, either continuously or periodically for extended periods; and
5. A prescribed professional must have confirmed that, as a result of those restrictions, they require help performing daily living activities from an assistive device or an assistance animal, or with the significant help or supervision of another person.

The Ministry's position is that the appellant meets the first two criteria noted above, and determined that the last three criteria had not been met. The appellant's position is that he meets all of the above legislative criteria.

The panel was unanimous in agreeing that the three criteria were not met by the appellant. He does not have a severe physical or mental impairment because it cannot be determined that his condition restricts his ability to function independently, effectively, appropriately for a reasonable duration.

The panel came to this decision based on the evidence provided in the appeal record as well as the oral evidence presented at the hearing that although the appellant has deficits to his cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation, the prescribed professional indicates an overall minimal to moderate impact on the appellant's daily functions.

The panel also noted from the reports that the appellant is able to walk 4+blocks unaided, climb 5+ steps and has no limitations in lifting and that the appellant is independent in all areas of mobility and physical ability.

The legislation requires that a prescribed professional confirm the level of restriction of ability to perform daily living activities, and the need for help in performing those activities. In this case the prescribed professional had not provided evidence confirming those legislative requirements have been met. The panel therefore finds the Ministry's decision in this case was reasonable based on the evidence and was a reasonable application of the legislation in the circumstances of this appellant.

The panel is unanimous in confirming the reconsideration decision of the Ministry under section 24 (2) (a) of the Employment and Assistance Act (EAA).

ATTACH EXTRA PAGES IF NECESSARY