



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration decision dated October 21, 2009 which denies the appellant's request for Persons with Disabilities (PWD) designation. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The prescribed professional does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The physician does not indicate that the appellant requires assistance with his daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
EAPWD Regulations, section 2



PART E – SUMMARY OF FACTS

The appellant seeks PWD designation. His original application for PWD designation was made on July 28, 2009. On September 23, 2009, the Ministry denied that request. On September 29, 2009, the appellant submitted a request for reconsideration. On October 21, 2009, the Ministry completed its review of the request for reconsideration and again denied the request.

The evidence before the Ministry included the appellant's PWD application which included a physician's report dated July 21, 2009 and an assessor's report dated July 13, 2009.

The physician's report sets out that the appellant suffers from internal derangement of left knee, substance abuse currently in remission; and chronic neck and back pain. Additionally, the physician notes that the appellant complains of anxiety, and problems with hearing. The physician indicates that the appellant's conditions are likely to continue for two years or more, and that his impairments are chronic.

The physician also notes that the appellant relies on the use of railings to aid with his impairments.

With regard to functional skill capacity, the physician indicates that the appellant can walk 1 to 2 blocks, can climb 2 to 5 steps, can lift 5 to 15 lbs, and can remain seated for less than one hour. He further indicates that the appellant suffers significant deficits with his cognitive and emotional function and that he has emotional disturbance as a result of his anxiety.

The physician indicates that the appellant is continuously restricted in his ability to manage personal self care (can't get into tub safely), meal preparation (he can't stand long enough to cook), basic housework, shopping (he can't carry bags), mobility outside of the home (uneven ground) and also with transportation (knee can buckle). Despite these findings, the physician also finds the appellant has no restrictions with regard to mobility inside the home, managing medications and managing finances.

In the assessor's report, the assessor indicates that the appellant is independent in 19 of 28 aspects of daily living activities. Specifically, the assessor indicates that the appellant is independent in all areas of personal care (with the exception of grooming where he requires periodic assistance), laundry, going to and from stores, paying for purchases, all aspects of meal preparation, banking and paying rent and bills, handling and storage of medications, getting in and out of vehicles and using public transit.

The assessor indicates that the appellant requires periodic assistance with grooming, basic housekeeping, reading prices/labels, making appropriate (shopping) choices, taking medications and using transit schedules.

The assessor indicates that the appellant requires continuous assistance with carrying purchases home, budgeting, and filling/refilling prescription medications.

With regard to social functioning, the assessor indicates that the appellant does require assistance, and in most cases he requires continuous assistance.

The assessor also notes that the appellant relies on the use of a knee brace for his left knee, and on bathing aids (handrails).

As a result of the comments noted in the physician's report and the assessor's report, the Ministry's position is that the appellant has not met all of the tests set out in the legislation for PWD status.

Specifically, the Ministry says:

- Although the reports indicate that the appellant encounters limitations to his functioning, they do not conclude that the limitations result in a severe physical or mental impairment;
- The physician does not confirm that the appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods;
- There is no indication of the degree or duration of the assistance required by the appellant;
- The information submitted with the appellant's request for reconsideration does not establish the missing criterion; and
- The physician does not confirm that as a result of direct and significant restrictions, the appellant requires assistance to perform daily living activities.

The appellant's position is that he requires PWD status for several reasons, namely:

- He also suffers from diabetes;
- He also requires orthotics;
- Despite his need for a new knee brace and orthotics, he cannot obtain funding for these items unless and until he is eligible for PWD;
- He has fears of falling and injuring himself on the stairs at his home (he lives in a basement suite) and as a result he is looking to relocate to a residence without stairs;
- He cannot afford alternate accommodation in his current city of residence, and therefore he is looking to move out of town;
- If he moves out of town, he will be farther away from the medical care and the family that he relies upon (daily) for assistance;
- He cannot use city transportation because of his lack of a knee brace, and (as mentioned) he cannot get a knee brace without PWD status;
- In terms of his daily living, he is not functional. He says he cannot get out of bed at times, and he cannot hold his arms out to do dishes;
- The fact that he has to take methadone does not help with his social functioning;
- Even simple tasks like grocery shopping are extremely difficult for him and take him significantly longer;
- He finds it difficult to do laundry;
- He finds it difficult to cook – he can't stand long enough and can't hold his arms out;
- He can only stand and walk for a few minutes at a time;
- He has trouble remembering to take medications;
- He relies on assistance (daily) from other people to get daily activities done;
- He has to plan 1 ½ hours in advance for transportation – because it takes him that long to get going.

[REDACTED]

At the hearing, the appellant relied on new evidence which consisted of a medical history report, a prescription note from his doctor, and a letter dated October 29, 2009 from his advocate to his physician requesting clarification on the appellant's diagnosis.

The medical history report is dated 09/01/01 to 09/10/29 and summarizes all of the appellant's medications.

The prescription note is dated October 5, 2009 and confirms the appellant's need for orthotics.

The letter dated October 29, 2009 contains the physician's hand written response wherein he indicates that the appellant does suffer from diabetes, but it is not a disabling condition. The physician further indicates that the appellant does not meet the criteria of having an anxiety disorder.

The panel has considered the new evidence submitted by the appellant and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a PWD designation.

Section 2(2) of the EAPWD Act provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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 (iii) the services of an assistance animal.

The Ministry agrees that the appellant has met the age requirement and the medical practitioner has confirmed the impairments are likely to continue for at least 2 years. However, the Ministry argues that the evidence falls short of proving that:

- the appellant has a severe physical or mental impairment;
- The prescribed professional does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The physician does not indicate that the appellant requires assistance with his daily living activities.

The appellant argues that he does have severe physical and mental impairments and that, by virtue of the fact that he is limited in his ability to perform various activities, his impairments do limit his ability to perform daily living activities continuously or periodically for extended periods.

With respect to whether or not the appellant suffers from a severe physical impairment, the panel considered the physician's report wherein he finds that the appellant can walk 1 to 2 blocks, can climb 2 to 5 steps, and can lift 5 to 15 lbs. Additionally, the panel considered the physician's finding that the appellant has no restrictions with regard to mobility inside the home, managing medications and managing finances. The panel also considered the physician's comments wherein he states that he has reviewed and agrees with the contents of the assessor's report.

ATTACH EXTRA PAGES IF NECESSARY

Turning to the assessor's report, he indicates that although the appellant does require continuous or periodic assistance with some aspects of his daily living, for the most part he is independent. Specifically, the assessor finds the appellant is independent in 19 of 28 aspects of daily living activities namely personal care (with the exception of grooming where he requires periodic assistance), laundry, going to and from stores, paying for purchases, all aspects of meal preparation, banking and paying rent and bills, handling and storage of medications, getting in and out of vehicles and using public transit.

The assessor also indicates that the appellant is experiencing *some* impairment which reduces his ability to function effectively in *some* areas of his life (ie) financial and medication management.

In the panel's opinion, the language used by the physician and assessor, and their findings, is not definitive of a severe physical impairment. Accordingly, the panel finds that the Ministry's decision was reasonable as the information provided does not establish that the appellant has a severe physical impairment.

With regard to his social functioning, the appellant says he struggles from anxiety and as a consequence has difficulties with social functioning. However, the physician indicates that the appellant does not meet the criteria of anxiety disorder, notwithstanding that he requires assistance with certain aspects of his social functioning. In the panel's opinion, this evidence falls short of establishing a severe mental impairment.

The panel further finds that the evidence falls short of establishing that the appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods. The information provided by the assessor and the physician suggests that, despite various limitations, the appellant remains largely independent in most areas of daily living such as personal care (with the exception of grooming where he requires periodic assistance), laundry, going to and from stores, paying for purchases, all aspects of meal preparation, banking and paying rent and bills, handling and storage of medications, getting in and out of vehicles and using public transit .

Further, the physician does not indicate that, as a result of direct and significant restrictions, the appellant requires assistance with his daily living activities.

In summary, although the appellant undoubtedly suffers from certain limitations both in his daily living and social functioning, the evidence falls short of establishing all of the criteria set out in section 2 of the EAPWD Act. As such, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.