

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In the reconsideration decision of May 7, 2009, the appellant was denied Persons with Disabilities (PWD) designation by the ministry. Specifically the ministry stated that they were not satisfied that the appellant had a severe physical or mental impairment. The ministry finds that the prescribed practitioner does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help or supervision to perform daily living activities.

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

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 appellant suffers from mild Cerebral Palsy, a seizure disorder and a closed head injury. He applied for Persons with Disabilities designation and his application was denied by the ministry.

The evidence before the ministry included the Physician Report and the Assessor Report, both completed by the appellant's physician and a letter regarding daily living activities prepared at "The Employment Place" dated April 28, 2009, endorsed in part by the appellant's physician. The prescribed professional (medical practitioner) reports no functional skill limitations of the appellant and further reports independent walking, stair climbing, standing, lifting, carrying and holding. The prescribed professional identifies 6 of 11 significant defects in the area of cognitive and emotional function citing that this impairment limits his ability to hold employment and only moderately impacts daily functioning. The prescribed professional identifies only 3 daily living activities requiring periodic support, listing the other 29 as "independent". The letter, prepared by "The Employment Place" endorsed in part by the prescribed professional, further supports the above information.

At the Hearing, the ministry supported the reconsideration decision stating that the ministry found that there was no specific information in either of the reports, or the letter, to confirm that the appellant had a severe physical or mental impairment, nor was there any information to suggest that the appellant's impairment directly or significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods. Further, the ministry found that there was no information to confirm that an assistive device is currently required by the appellant or that the appellant requires the significant help or supervision of another person or the services of an assistance animal to help him perform a daily living activity.

The appellant explained that he had some physical problems such as a weak left arm, eye injuries, and uneven hips in addition to his diagnosed ailments. He shared that he applied for Persons with Disabilities designation as a preparatory measure to deal with probable future health issues and his imminent layoff from work likely to happen in the next few weeks.

The ministry explained to the appellant the requirements to qualify for Persons with Disabilities designation, stressing the importance of the Physician and Assessor Reports with respect to "daily living activities".

The Panel confirmed with the appellant that he did not contest the above reports with respect to daily living activities with one exception – the appellant stated that he did not plan and/or cook his own meals.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry's decision to deny the appellant Persons with Disabilities designation finding that they were not satisfied that the appellant had a severe physical or mental impairment and that the prescribed professional does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed practitioner does not confirm that the appellant requires help or supervision to perform daily living activities.

In order to be designated as a Person with Disabilities, the following criteria must be satisfied:

EAPWD Act, Section 2 (2) 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.

EAPWD Act, Section 2 (3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) 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 the services of an assistance animal.

The ministry's argues that the appellant does not satisfy all of the criteria above in order to qualify for Persons with Disabilities designation. The ministry found that the appellant satisfies the age requirement (18 yrs) and that the appellant's medical condition is likely to continue for at least 2 years. The ministry is not satisfied that the appellant has a severe physical or mental impairment. Further, the ministry finds that the prescribed professional does not confirm that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that the prescribed professional does not confirm that the appellant requires help to perform daily living activities.

The appellant argues that he knows of many people receiving this assistance who have far fewer difficulties than him. He further stated that his doctor suggested that he apply for this assistance.

The Panel finds that the appellant fails to satisfy 3 of the 5 criteria necessary for Persons with Disabilities designation.

ATTACH EXTRA PAGES IF NECESSARY

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- (i) The appellant's diagnosis of Cerebral Palsy is described as "mild" by his prescribed professional. The appellant stated that his Epilepsy (Seizure Disorder) is under control to the point where he is able to work and function normally. There was no indication from the appellant or his prescribed professional that his "closed head injury" caused him any serious problems. After consideration of the evidence, the Panel is not satisfied that the appellant has a severe physical or mental impairment.
 - (ii) With regard to daily living activities, the Panel noted that the prescribed professional identifies only 3 daily living activities requiring periodic support, listing the other 29 as "independent". This led the Panel to conclude that the appellant's impairment does not directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods.
 - (iii) The prescribed professional reports no functional skill limitations of the appellant and reports independent walking, stair climbing, standing, lifting, carrying and holding. The prescribed professional confirms that the appellant does not require any prosthesis or aids for his impairment. Further, there is no indication in the Assessor Report or the Physician Report that the appellant requires help or supervision of another person to perform daily living activities.

The Panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and that it was a reasonable application of the legislation in the circumstances of the appellant. The Panel confirms the decision of the ministry.