

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The issue under appeal is the reasonableness of the Ministry's reconsideration decision of October 13, 2009 which held that the appellant did not meet all of the statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities (EAPWD) Act for the designation as a Person with Disabilities (PWD). The Ministry found that the appellant met the age requirement and did meet the duration criteria. However, the Ministry was not satisfied that the appellant has a severe physical or mental impairment, nor did the prescribed medical professional confirm that as a result of the impairment it directly and significantly affects his daily living activities (DLA), either continuously or periodically, for extended periods. The Ministry also found that it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform the DLA.

PART D – RELEVANT LEGISLATION (State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act Section 2

Employment and Assistance for Persons with Disabilities (EAPWD) 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 submitted a Person with Disabilities (PWD) application on June 17, 2009. The Ministry reviewed the application, but denied the request on August 13, 2009. The appellant submitted a Request for Reconsideration to the Ministry on September 16, 2009. The Ministry completed its review of the Request for Reconsideration on October 13, 2009, and upheld the original decision. The appellant submitted a Notice of Appeal to the Employment and Assistance Appeal Tribunal on October 26, 2009.

At the scheduled hearing the Ministry did not appear. The panel waited 5 minutes, and, after determining that the Ministry had been notified of the hearing, the panel proceeded under EAR Section 86(b)

The appellant's advocate argued that the appellant has several significant and severe medical conditions which affect his ability to perform his daily living activities (DLA). He argued that the appellant's condition has deteriorated significantly since the assessment by the appellant's physician on May 18, 2009. The advocate acknowledged the contradictory evidence provided by the appellant's physician referring to page 38 of the appeal record, which is Section D (Functional Skills) of the PWD application, and his testimony as to the appellant's current condition. The advocate referred the panel to a letter of September 16, 2009 from himself to the Ministry indicating that they had been unsuccessful in having the appellant's physician update the information contained in the PWD application. The advocate stated the physician had refused to sign off on any changes as relates to Section D, Functional Skills, of the PWD application. The advocate told the panel that the physician had stated "that if you are turned down, you will have to reapply". The advocate argued that the physician does not understand the PWD application process. It was his position that the testimony and information provided today should trump what was not confirmed by the physician and that the appellant should qualify for a PWD designation.

The appellant testified that he had multiple medical conditions, and his condition has deteriorated since the original PWD application was made. He testified that his girlfriend provides continuous and significant help on a daily basis to perform his DLA. He stated that his functional skills, his ability to walk, climb stairs, and lift have changed dramatically since the PWD application was made. He now uses a cane to assist with walking, and getting around.

Under EAA Section 22(4) the panel admitted the oral evidence of the appellant's girlfriend.

The appellant's girlfriend testified that the appellant cannot perform most activities and is incapable of performing his DLA without her help. She stated that the appellant used to be able to perform all of his DLA, but now is incapable. She stated that she moved in with the appellant in August 2009, but had begun to take over assisting with his DLA during the second week of July 2009. She testified that she has known the appellant since 2006, and did give him some help during 2007 and 2008. She again confirmed that the appellant cannot do anything. She testified that his medical condition has significantly deteriorated since the PWD application was made in May of 2009.

The appellant's physician under Section A of the physician's report (Diagnoses), indicates the appellant suffers from COPD, osteoarthritis of the right knee, peptic ulcer, and severe osteoarthritis of the left wrist.

In Section C, of the physician's report (Degree and Course of Impairment), his physician states that his right knee might improve in the future with a knee replacement.

In Section D, of the physician's report (Functional Skills), the appellant's physician indicates that the appellant can walk 1-2 blocks, climb 5 or more steps, lift 2 to 7kg and can remain seated 1 to 2 hours.

In Section E, of the physician's report (Daily Living Activities), in the appeal record, the appellant's physician indicates that the appellant's DLA are restricted in 8 of 10 areas. It is noted that the physician indicates the use of transportation as restricted with a comment indicating the appellant drives his own car. The DLA of Management of Medications is indicated as periodic, but no explanation is given.

In Section 3 of the assessor's report (Mental or Physical Impairment), the appellant's medical professional indicates that the appellant is essentially independent with walking and climbing stairs, although he does use an assistive device. Only with lifting and carrying of items does the appellant require continuous help.

In Section C of the assessor's report (Daily Living Activities), his medical professional indicates that the appellant is essentially independent in 21 of 33 areas of his DLA. She does indicate that the appellant does require some periodic assistance with some of his DLA and that only in the areas of Basic Housekeeping and Meal Preparation did he require continuous assistance and that some DLA take significantly longer.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is the reasonableness of the Ministry's decision to deny the appellant a designation of a Person with Disabilities (PWD) as the appellant did not meet all of the statutory requirements of the legislation to qualify for a PWD designation.

The Employment and Assistance for Persons with Disabilities (EAPWD) Act Section 2 states:

(A) Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

(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

(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.

(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

(iii) the services of an assistance animal.

ATTACH EXTRA PAGES IF NECESSARY

(4) The minister may rescind a designation under subsection (2).

The Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Section 2 states:

Daily living activities

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

(B.C. Reg.196/2007)

The Ministry's position, as outlined in the appeal record, is that the appellant meets the age requirement and the duration criteria. However, it is the Ministry's position that appellant's medical professionals do not confirm that the appellant has a severe physical or mental impairment or that his condition directly and significantly restricts his ability to perform daily living activities (DLA), either continuously or periodically for extended periods, and that as a result the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal as required by EAPWD ACT Section 2.

The panel heard the testimony of the appellant and his girlfriend that his medical condition has deteriorated significantly since the original PWD application was completed. The oral evidence, however, was viewed by the panel and subjective, and not supported by the available medical evidence.

The panel also heard the testimony from the appellant, and his advocate, that the appellant's physician was unwilling to confirm an updated diagnosis.

The position of the appellant, as argued by his advocate, is that the appellant's medical professional, specifically his physician, does not understand the process. He argued that the testimony from the appellant and his girlfriend, that he does have a severe physical impairment and that his DLA are directly and significantly restricted, should trump what his physician has failed to confirm.

The panel, in rendering a decision, relied on the physician's report in the PWD application completed on May 18, 2009 and on the assessor's report in the PWD application completed on May 26, 2009, and the requirements of the legislation.

The panel noted that the physician's report and the assessor's report were completed by two different medical professionals.

In the physician's report, Section C, Functional Skills, completed by his physician, the physician indicates that the appellant can walk 1 to 2 blocks, climb 5 or more steps unaided, lift 2 to 7kg and can remain seated 1 to 2 hours, and does not confirm any significant mental deficits. There is no confirmation by the appellant's prescribed professional of a severe physical or mental impairment as required by EAPWD ACT Section 2, therefore, the panel finds that a severe physical impairment has not been established.

In the physician's report Section E, Daily Living Activities, completed by his physician, the physician indicates that the appellant is restricted in 8 of 10 of his DLA. It is noted that the physician confirms a restriction under use of transportation, but notes that he drives his own car.

In the assessor's report Section 3, Mental or physical Impairment, completed by his prescribed professional on May 26, 2009, indicates that the appellant is essentially independent in respect to his Mobility and Physical Ability. He does use a cane when walking outdoors, climbing stairs, and when standing. He requires continuous help only when lifting or carrying.

The panel considered both the physician's report in respect to his restrictions to his DLA, and the assessment report completed by his medical professional. The panel noted the contradictory evidence, in some areas, between the physician's report and the assessor's report. The panel placed greater weight on the assessor's report as there was significantly more information and more thorough explanations provided in the assessment.

The assessor's report completed by his medical professional indicates that the appellant is independent in 21 of 33 areas of his DLA with the appellant only requiring continuous assistance in the area of diet regulation, basic housekeeping, and meal preparation, therefore the panel finds that the Ministry was reasonable in concluding that the evidence does not establish that the appellant's impairment directly and significantly affects his ability to perform his DLA, either continuously, or periodically for extended periods, and that he requires the significant help or supervision of another person, or the services of an assistance animal.

The panel views the legislation as clear and statutory. It is the appellant's medical professionals who must confirm that he has a severe mental or physical impairment and that his DLA's are directly and significantly restricted, either continuously or periodically for extended periods, and that he requires the significant help or supervision of another person, or the services of an assistance animal as outlined by EAPWD Act Section 2.

The panel, therefore, confirms the Ministry decision as reasonably supported by the evidence.