



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal arises from a reconsideration decision made on May 5th 2009 was to deny the appellant's application for a Persons with Disabilities (PWD) designation .

The reconsideration decision acknowledged the appellant had met two of the criteria to establish his entitlement : the appellant was over the threshold age of 18 years , and a medical practitioner had confirmed there was a physical or mental impairment likely to continue for at least 2 years .

However , the reconsideration decision found the appellant did not have a severe mental or physical impairment ; impairment did not directly and significantly restrict the ability to perform daily living activities, either continuously or periodically for extended periods ; and the requirement of needing significant help or supervision of another person had not been established , nor had the need for an assistive device or assistance animal .

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 2

Part E – SUMMARY OF FACTS

The evidence before the ministry was :

- medical records relating to an eye injury in 1983 and pulmonary investigations in January 2009
- physician report dated January 25 2009 describing effects of diagnosis of the following : COPD, asthma, musculoskeletal system pain, mood disorder (depression) , blindness in left eye.
- assessor's report completed by the physician January 25, 2009 describing nature and extent of physical and mental impairment in context of daily living activities
- applicant information form completed by the appellant on February 11, 2009
- letter dated April 18, 2009 prepared by appellant's advocate with additions, underlining and notations by the physician with an attached segment from the assessor's report entitled " daily living activities" with annotations done on behalf of the appellant by the advocate upon receiving the particulars from the appellant.

The appellant stated that he had worked as a _____ and had also worked as _____ . About two years ago the appellant saw his physician about hip _____ pain and it was at this point a friend of his father advised him to seek disability benefits because it appeared he was going to be off work for a time.

The appellant has had long standing medical problems such as the injury to the _____ eye in 1983 , depressive symptoms, asthma , pain in the joints especially hips and back .

After the application for a Person's With Disability designation (PWD) but before the reconsideration decision the appellant sustained a spiral fracture to the humerus of the right arm which has proven to be problematic in that there is a non union which may necessitate an operation by an orthopedic surgeon in the near future . The particulars of this most recent injury was before the reconsideration adjudicator .

The physician completed both the physician's report and the assessor's report on behalf of the appellant . The appellant stated the physician's report was done before the appellant completed the application for PWD and without the benefit of an interview or discussion about the effect of the impairments on daily living activities therefore part E of the report is blank. The assessor report was also done without the benefit of an interview or discussion with the appellant on the subject of the effect of impairments on daily living activities : this time the form part C was completed by the doctor by marking the particulars or all the categories " independent " . The categories are personal care, basic housekeeping , and shopping .

After the intake denial of the appellant's application for PWD but before the reconsideration decision the appellant's advocate prepared a letter dated April 18 2009. The letter was set up in such a way as to direct the doctor to the specific legislative requires including the degree of impairment . The doctor filled in the blanks left by the advocate and made some written annotations . The letter incorporates by reference a segment of the assessors report part C where the doctor's had previously checked off all daily living activities as " independent " . However the new addendum has handwritten additions in the handwriting of the advocate acting on instructions of the appellant showing various limitations contradicting the doctor's assessment of "independent " and commenting that assistance was in fact required for correspondence and forms, meals , lifting and bending at a minimum of twice a week.

It's at this point the paper trail becomes difficult to follow . Specifically , it would appear that someone , possibly the doctor , has completed a further assessor's report amending the original by inserting circles around four of the fourteen categories of mental or physical impairment upgrading the impact from moderate impact to major and indicating periodic help required to pay bills with the notation, "help may be required due to reading difficulty ?" . The doctor then incorporates by reference various clinical records and lab test results. **With the exception of the eye injury , test results are inconclusive or negative .**

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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 a Persons with Disabilities designation.

The legislation provides :

EAPWDA 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

EAPWDA section 2(3) states the requirement of help includes an assistive device , help or supervision of another person or the services of an assistance animal .

EAPWDR section 2 provides a legislative definition of " daily living activities " which, in turn , form part of the physician's report (Part E) and the assessor's report (Part C) . Daily living activities includes : prepare meals, manage personal finances, shopping, use of public or personal transport , perform housework, move indoors and out, personal hygiene and self care, manage medication , decision making and communication and interactions skills .

The ministry argues that legislation requires that a prescribed professional such as a doctor in this case provide sufficient detail to establish not only that a person in the appellant's position have not only a severe mental or physical impairment , but also there has been a direct and significant restriction on the ability to perform daily living activities. The physician's report was not filled out in part E "daily living activities " and the assessor's report as amended does not support a case of significant help or assistance being required especially when the doctor's notation includes question marks around "needs help because of reading difficulty" . So far as the April 18 2009 letter with its attached section of the assessor's form C as amended , it's clear the doctor has assessed the appellant's impairments as "moderate " whereas the legislated criteria is that the impairment must be severe .

The ministry argues they are entitled and indeed bound to accept the doctor's opinions under the doctrine of due deference and therefore the appellant's claim for a PWD designation must fail , at least in the absence of an assessor's report that addresses the issues raised by the ministry to date.



The appellant argues that his individual impairments have been characterized by the physician as moderate , the cumulative effect of all the different medical problems means the over all effect is a severe impairment . Specific attention is drawn to the amended assessor's report where some impairments have been upgraded from moderate to major .

Further , the appellant argues the April 18 letter and attachment fulfill the legislative requirements because the doctor "notes " and therefore accepts the appellant's own assessment of his restrictions of daily living activities ...and these restrictions , it is argued , are significant and require supervision or assistance of another person .

The panel finds that the information provided to support the appellant's application does not meet the legislative requirements . Specifically, the panel finds that impairment was not determined to be severe as required by EAPWDA section 2(2) because the doctor characterized them as moderate. The panel finds that daily living activities were not established by a prescribed professional to be directly and significantly restricted as required by EAPWDA section 2(2)(b)(i) because the doctor characterized the appellant as independent . Finally, the panel finds that was not established by a prescribed professional that the appellant required assistance to perform actives , an assistive device, significant help or supervision , or the services of an assistance animal as required by EAPWDA section 2(2)(b)(ii) and section 3(b)(i)(ii)(iii).

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision .