

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The reconsideration decision being appealed is the Ministry's November 24, 2009 decision denying the Appellant designation as a Person With Disabilities (PWD) because a medical practitioner did not confirm that the Appellant's severe physical impairment is likely to continue for at least 2 years as required under Section 2 of the Employment and Assistance for Persons with Disabilities Act.

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 (EAPWDA) 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 appeal record contains the following documents the Ministry had for its reconsideration decision:

1. The Appellant's PWD application dated August 11, 2009.
2. The Physician's Report completed by the Appellant's physician on August 9, 2009. The physician has known the Appellant for about 5 years and in the past 12 months has seen the Appellant 2-10 times. The physician diagnosed the Appellant with a severe illness and noted that the Appellant's physical impairment directly restricts his ability to perform various daily living activities. Under Section C of the form "Degree and Course of Impairment" the physician did not check any box to answer the question "Is the impairment likely to continue for two years or more from today?" That section of the form also asks "What is the estimated duration of the impairment and are there remedial treatments that may resolve or minimize the impairment? Please explain." In response the physician wrote: "This is very hard to predict but it has been ongoing for about 8 months with [no] sign of stopping".
3. The Assessor's Report completed by a registered nurse on July 28, 2009 that indicates that the Appellant's physical impairment directly and significantly restricts his ability to perform various daily living activities either continuously or periodically. The report also indicates the Appellant requires help to perform daily living activities because of his physical restrictions.
4. The Appellant's request for reconsideration dated November 4, 2009.

In its reconsideration decision the Ministry stated it was satisfied that:

- (a) the appellant met the age requirement and that he has a severe physical impairment; and
- (b) the prescribed professionals confirmed that this impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- (c) the prescribed professionals confirmed that as a result of direct and significant restrictions the Appellant requires help to perform daily living activities.

However the Ministry held that a medical practitioner did not confirm that the Appellant's impairment is likely to continue for at least two years.

At the hearing the Appellant testified and provided a written copy of his submissions. He said his symptoms come and go, and he stated that his physician told him he could not give a date for the end of his illness. The Appellant described his symptoms and pointed to narratives in the Physician Report and the Assessor's Report indicating his condition is severe, recurrent and incapacitating.

At the hearing the Ministry reaffirmed its reconsideration decision.

The evidence submitted by the Appellant relates to information in the appeal record. Therefore the Panel finds that his evidence is in support of the evidence that was before the Ministry and admits this evidence under Section 22(4)(b) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

In its reconsideration decision the Ministry concluded that the Appellant satisfied all but one of the required legislative criteria for a PWD designation. Therefore, the only issue in this case is whether or not the Ministry reasonably concluded that the Appellant is ineligible for a PWD designation because a medical practitioner did not confirm that the Appellant's physical impairment is likely to continue for at least two years.

Under Section 2 of the EAPWDA the Minister may designate a person as a PWD if the Minister is satisfied that person meets all of the specific legislative criteria found in Section 2(2) and Section 2(3) of the EAPWDA; including " that 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.."(Section 2(2)(a)).

The Appellant's position is that the Panel must look at the evidence as a whole; including, the Assessor's Report, the Physician's Report, and especially the narrative in the latter. The Appellant submits that, even though the physician did not complete a specific box, all of the evidence establishes that his physical impairment is likely to continue for at least 2 years.

The Ministry's position is the same as in its reconsideration decision.

The Panel notes that the PWD Application Physician Report form has a specific section titled, "Section C Degree and Course of Impairment". That section has this question: "Is the impairment likely to continue for two years or more from today?" with a box for "yes" and a box for "no". The Panel finds that the physician did not complete either box. Section C also has the question: "What is the estimated duration of the impairment and are there remedial treatments that may resolve or minimize the impairment?" In response the Appellant's physician wrote "This is very hard to predict but it has been ongoing now for about 8 months with [no] sign of stopping". The Appellant also testified that the doctor said he could not give the Appellant a date his illness would end.

The Panel finds that the physician in his report specifically stated that the duration of the Appellant's impairment is hard to predict and therefore he could not estimate the duration of the Appellant's physical impairment. So, as a medical practitioner he did not give an opinion whether or not the Appellant's impairment is likely to continue for at least 2 years. The Panel also finds that nothing else in the evidence as a whole provides the required medical practitioner's opinion that the Appellant's condition will continue for at least 2 years.

Therefore, after considering all of the evidence and the applicable legislation the Panel finds that the Ministry's reconsideration decision is reasonable based on the evidence before it and confirms that Ministry's decision.

ATTACH EXTRA PAGES IF NECESSARY