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PART C – DECISION UNDER APPEAL

This decision under appeal is the reconsideration decision of the Ministry of May 12, 2009, to deny the Persons with Disabilities designation. The Ministry found that the Appellant met the age requirement. The Ministry is satisfied that the Appellant has a severe physical impairment that is likely to continue for at least 2 years. However, the Ministry found that the material submitted by a prescribed professional did not establish that daily living activities are directly and significantly restricted either continuously or periodically for extended periods. The Ministry also found that the prescribed professional does not confirm that as a result of direct and significant restrictions, the Appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, s. 2
Employment and Assistance for Persons with Disabilities Regulation, s. 2

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of reconsideration was comprised of the Persons with Disabilities Designation Application assessor report dated January 29, 2009; the physician's report dated February 9, 2009; the Application Information dated February 27, 2009; and the physician's letter of May 4, 2009.

In Appendix A, it was the Ministry's submission that while it was satisfied that the Appellant has a severe physical impairment, the prescribed professional does not confirm that the impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods. It was also submitted that the prescribed professional did not confirm that as a result of direct and significant restrictions, the Appellant requires help to perform daily living activities.

The evidence of the assessor and the physician indicate that the Appellant requires some assistance with some daily living activities, but indicate that it is not significant in nature. In the original PWD application, the Appellant was described as being able to walk 2 to 4 blocks using a cane, climb more than 5 steps unaided, able to lift between 15 and 35 lbs and remain seated without limitation. Although the physician confirmed that the Appellant was restricted continuously in the areas of basic housework, shopping and mobility outside the home, he indicates that personal self care, meal preparation, management of medications, mobility inside the house, use of transportation, management of finances and social function are not. The assessor indicated that the Appellant is independent with most personal care functions, laundry, meal planning, finances, medications and use of public transit, but that it takes the Appellant significantly longer to carry them out. In the more recent letter from the physician, the doctor noted that the Appellant is unable to walk more than 2 blocks without the assistance of a cane, and has great difficulty climbing stairs and using public transportation.

The doctor also states in his letter that there are no grounds for stating that the Appellant has restriction in social functioning. This is inconsistent with Section C of the assessor's report which marks 4 of 5 restrictions are requiring continuous support or supervision. The assessor's comments in these areas refer to poor social judgment, that he is unable to develop relationships with those other than his wife, that he lacks social skills, is unable to adapt appropriately to social environments and has poor coping mechanisms.

It was the Appellant's submission that although the information supplied by the assessor and the physician in his report and subsequent letter were at times conflicting, the information to support the designation was present, given the history of the Appellants evidence of residential school abuse, depression, past drug abuse, anxiety and post traumatic stress disorder as described in Section B of the assessor's report. His physical impairment includes a bilateral leg and lower back injury, Hepatitis C, asthma, peptic ulcer disease, and pins and a rod in his lower leg due to a car accident injury in 1986. It was further submitted that the severity of the impairment was more accurately reflected in the narrative in the comments sections of the assessment forms, than in the boxes ticked. The Appellant gave oral testimony at the hearing that he prefers to avoid medication as he dislikes the side-effects and also does not drink alcohol anymore. He described his experience and how it has led to post traumatic stress disorder and some social impairment. He also described some physical restrictions such as standing for long periods that cause him to rely on his wife for assistance for activities such as cooking and shopping. He said he has other friendships and is able to sustain relationships, such as with his male friends.

No new evidence was presented at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the Ministry's decision to deny the Persons with Disabilities designation. The Ministry found that the Appellant met the age requirement. The Ministry is satisfied that the Appellant has a severe physical impairment that is likely to continue for at least 2 years. However, the Ministry found that the material submitted by a prescribed professional did not establish that daily living activities are directly and significantly restricted either continuously or periodically for extended periods. The Ministry also found that the prescribed professional does not confirm that as a result of direct and significant restrictions, the Appellant requires help to perform daily living activities.

The criteria for being designated as a Person with Disabilities are set out in the legislation. The Employment and Assistance for Persons with Disabilities Act, s. 2(2) provides that:

The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of the 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.

S. 2(3) further provides that:

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.

The Employment and Assistance for Persons with Disabilities Regulation, s. 2(1) provides that:

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.

The Minister is satisfied that he has a severe physical impairment. The Ministry argues, however, that his impairment does not significantly restrict his ability to perform daily living activities, and that he does not require significant help or supervision of another person to perform the daily living activities restricted by his impairment.

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The Appellant argues that his impairment is primarily physical, it is severe, and significantly restricts his ability to perform daily living activities continuously. He submits that as a result of these restrictions, he requires help from his wife to perform daily living activities.

It is the view of this Panel that, while the Appellant's impairment is chronic and therefore satisfies the legislative requirement of being restricted continuously or periodically for extended periods, direct and significant impact on his daily living activities has not been shown, and the need for significant help or supervision to perform those daily living activities has not been shown.

According to the physician's letter, the Appellant is unable to walk more than 2 blocks without the assistance of a cane, and has great difficulty climbing stairs and using transportation. The assessor notes, however, that he is independent with most personal care functions, laundry, meal planning, finances, and management of medications, conflicting with the evidence of the physician as to ease of ability to use public transit. The physician confirmed that the Appellant is also restricted continuously in the areas of basic housework, shopping and mobility outside the home, but that personal self care, meal preparation, management of medications, mobility inside the house, management of finances and social function are not. The Panel therefore finds that direct and significant impact on the Appellant's daily living activities has not been shown.

The Appellant submitted that his social impairment and some physical restrictions such as standing for long periods cause him to rely on his wife for assistance with activities like cooking and shopping. Although the assessor's report indicated restriction in social functioning requiring continuous support and supervision in respect to poor social judgment, relationships, social skills and coping mechanisms, the physician has stated in his letter that there are no grounds for stating that the Appellant has a restriction in social functioning. Moreover, according to his oral testimony, the Appellant seems to be able to sustain other friendships. The Panel therefore finds that on the balance of the evidence, the need for significant help or supervision to perform daily living activities has not been shown. Furthermore, that there is no direct and significant impact by the Appellant's impairment on his daily living activities, as noted above, makes the question of whether he needs significant help or supervision to perform those daily living activities a moot point.

In the absence of consistent evidence from the physician, assessor and the Appellant, himself, as how and whether his daily living activities are directly and significantly restricted, and compelling evidence from a prescribed professional that as a result of direct and significant restrictions, the Appellant requires help to perform daily living activities, the Panel finds the Ministry's decision to be reasonably supported by the evidence, and confirms the decision of the Ministry under sections 24(1)(a) and 24(2)(a) of the EAA.