

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated November 17, 2009, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). Of the five legislative criteria that an applicant for designation as a PWD must meet, the Ministry found that the Appellant met two; the age requirement and the requirement that a medical practitioner must confirm that the applicant's impairment is likely to continue for at least two years. The Ministry found that the Appellant does not have a severe mental or physical impairment that directly and significantly restricts his ability to perform daily living activities, either continuously or periodically for extended periods, and that a prescribed professional did not confirm that, as a result of those restrictions, the Appellant requires help to perform those activities.

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

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).

Information before the Ministry at Reconsideration included:

- the Appellant's Persons with Disabilities Designation Application, stamped as received by the Ministry August 10, 2009
- the Ministry Adjudicator's worksheet, dated October 8, 2009
- the Appellant's Request for Reconsideration, with attachments, dated October 22, 2009

In his Request for Reconsideration, the Appellant wrote that his physician stated that he has traumatic brain injury, osteoporosis, osteoarthritis, low back injury, left hip fracture and a mild stroke. The physician wrote that the Appellant has severe back and hip pain, cannot sit for any length of time, uses canes for walking and requires bathing aids and a TENS machine.

The Appellant's physician, who also completed the Assessor Report portion of the PWD Designation Application, stated that the Appellant has poor memory and difficulty concentrating, that he requires a lot of assistance to get around and that he receives support from his father. He noted that the Appellant uses canes for walking indoors, walking outdoors and climbing stairs, and requires continuous assistance with carrying and holding.

The Appellant included a copy of a Social Benefits Tribunal decision from another province in support of his Request for Reconsideration. It states that the Appellant met the test for person with a disability under the legislation of that province in 2006.

The Ministry, in the Reconsideration Decision, noted the Appellant's diagnoses and physical limitations and found that the information provided does not establish that the limitations result in a severe physical impairment. The Ministry listed the cognitive and emotional impacts stated by the Appellant's physician and found that most aspects of cognitive and emotional functioning are not impacted. The Ministry found that the Appellant's difficulties with memory, concentration and executive functioning do not establish a severe mental impairment.

With respect to the Appellant's ability to perform daily living activities, the Ministry noted that the Appellant uses canes for mobility and a back board for bathing and his physician stated that he takes significantly longer carrying purchases home, but he is assessed as independent in performing all other daily living activities related to personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. The Ministry found that the information provided does not establish that the Appellant's impairment directly and significantly restricts his ability to perform daily living activities, either continuously or periodically for extended periods.

With respect to the Appellant's requirement for help to perform daily living activities, the Ministry found that although he uses canes and a back board and a TENS machine for pain management, the information provided does not establish that he requires significant help with daily living activities.

The Ministry noted that the material submitted relating to the Appellant's disability designation from another province does not establish that he has met the British Columbia legislative criteria.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for PWD designation.

Sections 2(2) and 2(3) of the EAPWDA list the criteria that an applicant who has reached 18 years of age must meet for the ministry to designate him/her as a PWD. The ministry must be satisfied that a person has a severe mental or physical impairment that:

- a) pursuant to s. 2(2)(a) in the opinion of a medical practitioner is likely to continue for at least 2 years;
- b) pursuant to s. 2(2)(b) in the opinion of a prescribed professional: (i) directly and significantly restricts the person's ability to perform daily living activities (DLAs), either continuously or periodically for extended periods; and, (ii) as a result of those restrictions, the person requires help to perform those activities; and,
- c) pursuant to s. 2(3)(b) the help required may be in the form of (i) an assistive device; (ii) the significant help or supervision of another person; or, (iii) the services of an assistance animal.

S. 2(1)(a) of the EAPWDR lists the DLAs pertaining to those with severe physical and mental impairment. These include meal preparation, managing personal finances, shopping for personal needs, using public or personal transportation facilities, performing basic housework, mobility indoors and outdoors, performing personal hygiene and self-care, and managing personal medication. S. 2(1)(b) of the EAPWDR lists the additional DLAs pertaining to those with a severe mental impairment and includes making decisions about personal activities, care or finances; and ability to relate to, communicate, or interact with others effectively. S. 2(2) of the EAPWDR lists the prescribed professionals referred to in s. 2(2)(b) of the EAPWDA.

The Appellant's position is that he meets the criteria for designation as a Person with Disabilities (PWD) because his physician has confirmed the severity of his impairment and the fact that he requires assistance in order to perform daily living activities. In addition, the Appellant submitted information from another province confirming that he met that province's criteria for designation as a person with disabilities.

The Ministry's position is that the information provided does not support a designation of PWD. The Appellant's mental and physical impairments are not severe, and his physician has indicated that he is independent in the performance of almost all daily living activities. The information from the another province does not establish that the Appellant meets the criteria for designation as a PWD in British Columbia.

The Panel first considered the severity of the Appellant's mental impairment. Although the Appellant's physician indicates a significant deficit with the Appellant's memory and difficulty concentrating, the remaining 11 items relating to cognitive and emotional functioning are indicated as having no or minimal impact on the Appellant's daily functioning. The Panel finds that the Ministry's determination that the Appellant does not have a severe mental impairment was reasonable.

With respect to a severe physical impairment, the Appellant's physician indicated that he has intracranial injuries requiring multiple surgeries, osteoporosis, osteoarthritis, low back injury, left hip

fracture and a mild stroke. His functional skills are limited to walking less than one block, no stair climbing and an inability to sit for any length of time. The physician described his back pain as "severe". The Panel finds that the Ministry's determination that the Appellant does not have a severe physical impairment was not reasonable.

With respect to the Appellant's ability to perform daily living activities, the Panel notes that the Appellant's physician has indicated deficits in walking, climbing, lifting and carrying and holding, with notations that his father "provides him with lots of support" and "he needs a lot of assistance to get around". In addition, the physician indicated that the Appellant uses an assistive device for bathing and uses canes for walking. The Panel finds that the Ministry's determination that the Appellant's impairment does not directly and significantly restrict his ability to perform daily living activities was not reasonable.

With respect to the Appellant's requirement for assistance to perform daily living activities, the Panel notes the requirement for canes, a back board for bathing and the physician's note that he requires "a lot of assistance to get around" and that the Appellant's father provides "lots of support". The Panel finds the Ministry's determination that it has not been demonstrated that the Appellant requires the significant help of another person to be unreasonable.

The Panel finds that the Ministry's decision to deny the Appellant's application for PWD designation was not reasonably supported by the evidence. The Panel therefore rescinds the Ministry's decision.