

PART C – Decision under Appeal

APPEAL#

The decision under appeal is the Ministry's Reconsideration Decision dated December 1, 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.

PART D – Relevant Legislation

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

APPEAL #

Information before the Ministry at Reconsideration included:

- a note from the Appellant's physician dated September 15, 2009
- the Appellant's Persons with Disabilities Designation Application dated June 24, 2009
- the Ministry's letter denying the Appellant's application, with attachments, dated September 17, 2009
- the Appellant's Request for Reconsideration dated October 9, 2009

At the hearing, the Appellant's Representative submitted a written copy of his argument which was admitted for reference by the Panel.

At the hearing the Appellant submitted a copy of a questionnaire completed by a physician dated February 4, 2010 and a copy of a medical report from an outpatient clinic dated February 19, 2010. Both were admitted by the Panel under Section 22(4) of the Employment and Assistance Act as information in support of the information and records that were before the minister when the decision being appealed was made. The Ministry objected to the admission of these documents because they refer to information that was not available at reconsideration.

The Appellant stated that his condition has deteriorated since his application for PWD designation was made. He now lives in a care facility due to an injury he suffered in September, 2009.

The Appellant stated that in his Application for PWD Designation made in June, 2009, his physician indicated continuous restrictions in all daily living activities, requiring the use of a cane, which he confirmed in his note of September, 2009. The Assessor, in her report, indicated that the Appellant is severely restricted in almost all daily living activities, and that he requires an assistive device. In addition, the physician, in the original application, described the Appellant's osteoarthritis as severe. In the supporting information admitted at the hearing, the Appellant's outpatient physician described his subsequent injuries as severe. His physician stated in his note of February, 2010 that due to his injuries, the Appellant requires significant help from others and from assistive devices to manage daily living activities. The Appellant stated that he meets the criteria for designation as a PWD.

The Ministry responded that in reference to the Appellant's original Application for Designation as a PWD, the information provided shows that he meets two of the five legislated criteria. With reference to the physician's indication that the Appellant is continuously restricted in all daily living activities, the Ministry noted that the box indicating continuous restriction is marked for every activity including for those activities also indicated as not restricted. The Ministry stated that the application does not contain sufficient information to establish that the Appellant meets the criteria for designation as a PWD. With respect to restrictions in the performance of daily living activities, the Reconsideration Decision states that a prescribed professional did not confirm that the Appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods. The Reconsideration Decision states that the Appellant's physician did not provide details regarding what activities require assistance and how often assistance is required. The Reconsideration Decision states that the degree of impairment noted by the Appellant's Assessor was not reported by his physician, and that the information supplied did not establish a severe mental or physical impairment. The Ministry made no comment with respect to the documents admitted by the Panel at the hearing.

PART F – Reasons for Panel Decision

APPEAL #

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a Person with Disabilities (PWD).

EAPWDA

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;

"prescribed professional" 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

(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.

(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.

EAPWDR

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.

The Appellant's position is that he meets the legislative criteria for designation as a PWD. In his original application his physician described his condition as severe and noted continuous restrictions in the performance of many daily living activities. The assessor, in her report, noted that he takes longer to perform many daily living activities and that he requires continuous or periodic assistance with almost all of them. The supporting material admitted at the hearing clearly shows that he meets the criteria for designation as a PWD.

The Ministry's position is that the information provided in the Appellant's application for PWD designation shows that he meets two of the five legislative criteria for approval. The degree of restriction reported by the Appellant's assessor is not reported by his physician. The Ministry did not comment on the documents admitted by the Panel at the hearing.

The Panel finds that there is no evidence to establish a severe mental impairment, and 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, in the original application for PWD designation, described the Appellant's osteoarthritis as severe. The assessor describes it as severe, and notes that he has chronic pain, and that he requires an assistive device as well as assistance from another person with all household activities of daily living. Without considering the supporting information admitted at the hearing, 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 indicated that he is continuously restricted in basic housework, daily shopping, mobility inside and outside the home and use of transportation. The assessor's report indicates that the Appellant is independent in only two daily living activities. The Panel finds that the Ministry's determination that his impairment does not directly and significantly restrict his ability to perform daily living activities was not reasonable.

The Panel notes that the Ministry made no determination in the Reconsideration Decision in respect to the Appellant's requirement for assistance to perform daily living activities. The Panel notes that both the Appellant's physician and assessor indicated a requirement for assistive devices, specifically a cane and grab bars. The Panel finds that this criterion has been met.

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.