

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration decision dated November 12, 2009 which denies the appellant's request for Persons with Disabilities (PWD) designation. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The prescribed professional does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The physician does not indicate that the appellant requires assistance with his daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
EAPWD Regulations, section 2

PART E – SUMMARY OF FACTS

The appellant seeks PWD designation. His original application for PWD designation was made on July 7, 2009. On August 21, 2009, the Ministry denied that request. On October 1, 2009, the appellant submitted a request for reconsideration. On November 12, 2009, the Ministry completed its review of the request for reconsideration and again denied the request.

The evidence before the Ministry included the appellant's PWD application which included a physician's report dated May 4, 2009, an assessor's report dated "2009/001/08", and a follow up undated report prepared by the assessor.

The physician's report sets out that the appellant suffers from chronic Hepatitis C, degenerative arthritis of hands (and in particular his fingers), and possible hemochromatosis. With regard to the Hepatitis C, the physician notes that it causes the appellant some fatigue and anorexia at times. With regard to his arthritis, the physician notes that it is most notable in the appellant's fingers and has led to deformity in his finger joints, weakness of grip, strength and pain with any kind of hand activity. He adds that the condition has slowly progressed over the years. Additionally, the physician notes that the appellant is significantly limited in his ability to do any work involving his hands because of pain and limitation of strength and mobility. The physician indicates that the appellant's conditions are likely to continue for two years or more, and that his impairments are chronic.

The physician notes that the appellant does not require any prostheses or aids for his impairments.

With regard to functional skill capacity, the physician indicates that the appellant can walk 4+ blocks, can climb 5+ steps, can lift 15 to 35 lbs, and has no limitations with regard to his ability to remain seated. The physician further indicates that the appellant does not suffer any significant deficits with his cognitive and emotional function.

The physician indicates that the appellant is continuously restricted in his ability to do basic housework, and periodically restricted in his ability to perform personal self care, meal preparation, and daily shopping. He explains "periodic" by indicating that the assistance depends on the exact activity, and that the appellant has difficulty with fine motor function related to his hand arthritis. With regard to the remainder of enumerated daily living activities, the physician finds that the appellant is unrestricted.

The assessor's first report was completed by the appellant's social worker & advocate. She indicates that the appellant is independent in 12 of 28 aspects of daily living activities. Specifically, the assessor indicates that the appellant is independent in performing transfers, reading prices and labels, making appropriate choices, paying for purchases, safe storage of food, budgeting and paying rent/bills, taking medications and handling/storing them, getting in and out of a vehicle, and using transit schedules and arrangement transportation.

The assessor indicates that the appellant requires periodic assistance with dressing, grooming, and feeding himself.

The assessor indicates that the appellant requires continuous assistance with all aspects of basic housekeeping, going to/from stores, carrying purchases home, banking, and filling/refilling

prescriptions.

With regard to bathing, toileting, regulating his diet, meal planning, preparation and cooking, and using public transit, the assessor finds that it takes him significantly longer.

She also notes that the appellant cannot do anything involving fine motor skills, he wears shoes without laces, shirts without buttons etc., needs help with zippers and cannot cut his nails.

The assessor did not complete that portion of the assessment pertaining to social functioning, and marked it "N/A".

The assessor notes that the appellant does not require any assistive devices, but that things need to be adapted to accommodate his fine motor impairments.

Following her preparation of the assessor's report, and in support of the reconsideration application, the assessor provided the Ministry with a further letter which adds to the severity of the appellant's limitations. In this additional letter, the assessor states that, due to severe frostbite to his hands and feet, the appellant has significantly lost the use of his hands and experiences pain in his feet. She states that performing even the simplest of daily living activities is very challenging for the appellant, and that he relies on his neighbours to perform almost all aspects of his daily living with the exception of his grooming and toileting.

Additionally, the assessor explains the frequency of his assistance. She notes that two to three times per week the appellant's friends assist him with yard work, snow removal, meal preparation, housework, shopping and transportation. She adds "...Without continuous help to perform his daily living activities, [the appellant] would not be able to function on his own as his hands are so severely deformed."

At the hearing, the assessor stated she completed a second report because this was only the first time she had filled out an assessor's report, and as a result she felt her original report fell short of providing a full explanation of the appellant's physical limitations and the impact these restrictions have on his daily living activities.

Notwithstanding the comments made by the physician and the assessor in their reports, the Ministry's position is that the appellant has not met all of the tests set out in the legislation for PWD status.

Specifically, the Ministry says:

- Although the reports indicate that the appellant encounters limitations to his functioning, they do not conclude that the limitations result in a severe physical or mental impairment;
- The prescribed professionals do not confirm that the appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods;
- The prescribed professionals do not confirm that as a result of direct and significant restrictions, the appellant requires assistance to perform daily living activities.

At the hearing, the appellant and his advocate submitted that the ministry failed to place sufficient weight on the written comments made by the physician regarding the appellant's significant restrictions, and that the Ministry failed to place sufficient weight on the assessor's two reports. The assessor (advocate) stated that the Ministry appeared to have placed more weight on the physician's report, but that her reports ought to have been equally considered in light of the fact that she, too, is a "prescribed professional" as defined by the legislation.

The appellant made the following additional submissions at the hearing:

- His biggest restriction relates to his arthritis of his hands and his chronic fatigue, which is made worse by not eating. Not eating is a common occurrence for him partly because he has troubles making his own meals, and often times because he has no appetite due to his other medical conditions;
- He was not present when his physician completed the report;
- The physician's findings regarding his functional abilities are inaccurate and dated as the physician had not seen him for approximately 6 – 7 months by the time he dropped the form off;
- He does require continuous assistance from his neighbours with regard to his daily living activities, with the exception of grooming and toileting;
- When his neighbours/friends are unable to help him, he goes without performing the daily living activity. For instance, if neighbours are not available to help him plan meals, and if he is unable to do it himself, he will just not eat. He stated he has gone 2 -3 days at a time without any meals or food. He used to weigh 180 lbs. Now he weighs 140 lbs;
- Not only are his fingers extremely disfigured, but he has a missing digit on his right hand. For medical reasons, that finger was amputated several years ago making it even harder for him to use his hands;
- His remaining fingers cause him constant pain and they do not bend;
- He cannot use anything with a screw top, and has to rely on pliers to open things;
- The door handles at his home have been modified from a round knob style to a lever style because he did not have the ability to grasp and turn the round handles;
- He has modified much of his wardrobe (switched from button up shirts to shirts with snaps) for greater ease;
- On an average month, he will have a couple of days where he can perform at a reasonable level without much assistance, but the rest of the month is "shot to hell";
- In addition to his other medical problems, he also has asthma; and
- Further, in September 2009 he was hospitalized for 18 days as a result of blocked small intestine and resulting surgery. About an hour after his surgery he suffered from a heart attack, and then from pneumonia after that.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a PWD designation.

Section 2(2) of the EAPWD Act provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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 Ministry agrees that the appellant has met the age requirement and the medical practitioner has confirmed the impairments are likely to continue for at least 2 years. However, the Ministry argues that the evidence falls short of proving that:

- the appellant has a severe physical or mental impairment;
- The prescribed professional does not confirm that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The physician does not indicate that the appellant requires assistance with his daily living activities.

The appellant argues that he does have severe physical impairments and that, by virtue of the fact that he is limited (either periodically or continuously) in his ability to perform various daily living activities, he should be eligible for PWD status.

With respect to whether or not the appellant suffers from a severe physical impairment, the panel considered the physician's transcribed notes wherein he states, "This man has chronic hepatitis C, this causes him some fatigue and anorexia at times. In addition he has *severe* degenerative arthritis involving his hands, in particular his fingers which has led to deformity in his finger joints, weakness of grip, strength and pain with *any kind* of hand activity...He is *significantly limited* in his ability to do *any work involving his hands* because of pain and limitation of strength and mobility."

ATTACH EXTRA PAGES IF NECESSARY

The panel also considered the physician's indications that the appellant is continuously restricted in his ability to do basic housework, and periodically restricted in his ability to perform personal self care, meal preparation, and daily shopping. He explains "periodic" by indicating that the assistance depends on the exact activity, and that the appellant has difficulty with fine motor function related to his hand arthritis.

Turning to the assessor's first report, she indicates that the appellant requires periodic assistance with dressing, grooming, and feeding himself, and continuous assistance with all aspects of basic housekeeping, going to/from stores, carrying purchases home, banking, and filling/refilling prescriptions. In her follow up report, the assessor clarifies the nature and extent of assistance by stating that the appellant has significantly lost the use of his hands, that performing even the simplest of daily living activities is very challenging for the appellant, and as a result he relies on his neighbours to perform almost all aspects of his daily living with the exception of his grooming and toileting. She adds that two to three times per week the appellant's friends assist him with yard work, snow removal, meal preparation, housework, shopping and transportation and "...Without continuous help to perform his daily living activities, [the appellant] would not be able to function on his own as his hands are so severely deformed."

The panel finds that the language used by the physician and assessor, and their findings, is definitive of a severe physical impairment. Accordingly, the panel finds that the Ministry's decision was not reasonable as the information provided does establish that the appellant has a severe physical impairment.

According to the physician and assessor, the appellant has no restrictions at all with his social functioning. As such, the panel finds that the evidence does not establish a severe mental impairment.

The panel further finds that the evidence of both the physician and assessor confirms that the appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods. The information provided by the assessor and the physician suggests that, as a result of his fine motor limitations, the appellant is largely dependent in most areas of daily living, many of which are critical to his existence such as meal planning, preparation, cooking, dressing, grooming and feeding himself.

Finally, the panel finds that as a result of the restrictions noted by the physician and the assessor, the appellant does require assistance to perform his daily living activities.

In summary, the appellant undoubtedly suffers from certain severe medical problems which, according to two prescribed professionals, significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods as per the requirements of section 2 of the EAPWD Act. As such, the panel finds that the Ministry's decision was not reasonably supported by the evidence and rescinds the decision pursuant to section 24(1)(a) and 24(2)(b) of the Employment and Assistance Act.