

PART C – Decision under Appeal

APPEAL#

The decision under appeal is the Ministry's Reconsideration Decision dated February 1, 2010, 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

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

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Information before the Ministry at Reconsideration included:

- the Appellant's Persons with Disabilities Designation Application, stamped as received by the Ministry October 30, 2009
- a psychological report dated September, 2003, stamped as received by the Ministry January 11, 2010
- the Appellant's Request for Reconsideration, with attachments, stamped as received by the Ministry January 11, 2009

At the hearing, the witness, who is the Appellant's aunt, stated that he had lived with her for a year, during which time she observed that he functions at an age level lower than his chronological age. She stated that the Appellant is socially isolated and that although he can manage his own finances to a limited degree, he has difficulty remembering information such as his debit card PIN number. She stated that he does not use transit because he cannot understand the schedules. He pays his room and board through an automatic transfer set up by the bank. The Panel admitted the witness's evidence under Section 22(4)(b) 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 Appellant's Representative, who is his grandmother, stated that he is slowly becoming independent. He can cook and clean, he attends a centre where he plays games, but he does not interact well with strangers. His only real social contacts are with his family. She read aloud the missing second page of a letter included in the appeal record, which was written by a support worker at the centre attended by the Appellant. It states that in the worker's opinion the Appellant could not live independently, that he is isolated and cannot perform physical tasks for long.

In response to questions from the Panel, the Appellant's representative stated that the Appellant has difficulty with short-term memory and becomes agitated if he is frustrated. She stated that the Appellant went alone to the doctor's office when the PWD application form was completed; he actually had a medical student complete it. She believes that if she had been there it would have been done more accurately.

The Ministry responded that their decision was based on the information contained in the Appellant's PWD application. It indicates that the Appellant's physical skills are adequate and his assessor has shown that he is independent in performing all daily living activities. The psychological report submitted with the Request for Reconsideration was done in 2003, therefore it is not current. On questioning by the Panel, the Ministry agreed that the psychological report should have been considered and given appropriate weight rather than being viewed as irrelevant. The Appellant's PWD application does not support designating him as a person with disabilities.

On questioning by the panel, the Ministry agreed that the physician's written comments indicating the Appellant's difficulties with social interaction should have been given more weight than the check marked lists of abilities.

In the PWD application, the Appellant's physician, completing both Physician and Assessor Reports, stated that the Appellant has a long history of morbid obesity, a long history of diminished social interaction, was diagnosed with a reactive attachment disorder and delayed social development with

a question of pervasive developmental delay. He commented that the Appellant has an ongoing lack of socialization and difficulty initiating and maintaining relationships. In the Assessor Report, the physician reported that the Appellant has difficulty interpreting social cues and engaging in social interaction.

The psychological report dated 2003 which was submitted by the Appellant with his Request for Reconsideration contains a lengthy history of the Appellant's background and a report of the Appellant's intellectual functioning, cognitive abilities, academic achievement, personality/emotional functioning and a diagnosis. The diagnosis indicates that the Appellant meets the diagnostic criteria for ADHD, ODD and a Disruptive Behaviour Disorder. It contains a comment that the Appellant functions at a level significantly lower than his chronological age.

PART F – Reasons for Panel Decision

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

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 has a severe mental impairment that directly and significantly restricts his ability to perform daily living activities, and, as a result, he requires the assistance of another person to perform them. His position is that he meets the criteria for designation as a PWD.

The Ministry's position is that the Appellant's Persons with Disabilities Application does not establish that he has a severe physical or mental impairment, it does not confirm that his impairment directly and significantly restricts his ability to perform daily living activities, either continuously or periodically for extended periods, nor, that as a result of those restrictions, he requires help to perform them.

The Panel first considered the Ministry's determination that the Appellant does not have a severe physical impairment. Although the Appellant is described as morbidly obese by his physician, his physical functional skills are all indicated as at the highest level, and all physical daily living activities are checked as unrestricted or independent. The Panel finds the Ministry's determination that the Appellant does not have a severe physical impairment to be reasonable.

With respect to a severe mental impairment, the Appellant's physician indicated that there are significant deficits with cognitive and emotional function and continuous restriction in social functioning. In the section dealing with health history, the physician stated that the Appellant has been diagnosed with a reactive attachment disorder and delayed social development. He stated that the Appellant is currently on medication for depression and anxiety. The Panel finds that the PWD application contains information that supports a finding of a severe mental impairment.

The Panel finds that the 2003 psychological report which assessed the Appellant's functioning and abilities and which gave a diagnosis of ADHD, ODD and Disruptive Behaviour Disorder was not given sufficient weight by the Ministry. The Reconsideration Decision stated that this report is not considered as current information; however the Panel does not regard this as sufficient to determine that the report is not relevant. The report may have been prepared several years ago, but there is no indication that it is no longer accurate.

The Panel finds the Ministry's determination that the Appellant does not have a severe mental impairment to be unreasonable.

With respect to the Appellant's ability to perform daily living activities, the Panel notes that the Appellant's physician indicated difficulty initiating and maintaining social relationships and that he has almost no social interaction. He indicated that social functioning is restricted continuously. The Panel notes that per Section 2(1)(b), EAPWDR, in relation to a person who has a severe mental impairment, relating to, communicating or interacting with others effectively is a daily living activity. 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.

The Appellant's requirement for assistance was confirmed by the psychological report, the witness and his representative. The Appellant's physician indicated in the PWD application that the Appellant receives assistance from his grandmother. The letter from a support centre worker which was

submitted to the Ministry with the Reconsideration Request states that the worker does not feel that the Appellant could live independently. The Panel finds that the Ministry's determination that it has not been confirmed that as a result of direct and significant restrictions the Appellant requires help to perform daily living activities was not reasonable.

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.