

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The appellant is appealing the ministry reconsideration decision of February 25, 2010 denying him Persons with Disabilities (PWD) designation on the basis that he failed to meet several of the legislative criteria. The ministry found that the appellant met the age requirement, and has an impairment that his doctor has confirmed is likely to continue for at least two years. But the ministry was not satisfied that:

- the appellant has a severe physical or mental impairment
- the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2 (EAPWDA)
Employment and Assistance for Persons with Disabilities Regulation, Section 2 (EAPWDR)

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).

The evidence before the ministry at reconsideration includes:

- The Request for Reconsideration dated February 10, 2010 (with one page letter attached)
- The ministry's denial letter dated January 30, 2010 (three pages)
- The appellant's application for PWD designation

The appellant, who is over the age of 18, has been diagnosed by his physician with emphysema and an anxiety disorder. His doctor notes that he has severe Chronic Obstructive Pulmonary Disease and "chronic bronchitis with regular flare-ups", and that he "struggles with severe shortness of breath".

In terms of functional skills, the doctor notes in the physician's report that the appellant is unable to walk unaided for more than 1 to 2 blocks, and that he has no further limitations. The same doctor has filled in the assessor's report. In the assessor's report, the doctor notes that the appellant takes significantly longer than normal ("twice as long") with walking indoors and outdoors, and with climbing stairs. The doctor has not noted any deficits in the area of cognitive or emotional functioning.

In terms of daily living activities, the physician notes in both reports that the appellant is not restricted in any activity of daily living. He adds, however, that the appellant "has worked as a welder and due to his COPD he is not able to work in this field". He further states that the appellant's shortness of breath "curtails his activities and prevents him in performing tasks that require exertion".

With respect to the appellant's need for assistance, the doctor notes that the appellant is independent with all activities and that he does not require the assistance of others, or of an assistive device.

The doctor has seen the appellant between 2 and 10 times, and has known the appellant for five years.

At the hearing, the appellant stated that the doctor that filled in the report is one of three who works in the doctor's office, and is not his main doctor. He stated that he was not in the room with his doctor when he filled in the reports, and that mistakes were made by the doctor as a result. He stated, for instance, that he is unable to walk more than one block, and is not able to climb stairs unaided; he must use a handrail and must rest at the top to catch his breath. He says that he is able to lift only between 2 and 7 kilograms, and that he cannot carry that weight anywhere. He added that he uses his bicycle as an assistive device for mobility as he can't walk, and for carrying groceries and other items to and from stores.

The appellant indicated that he can "barely speak", and that the doctor erred in indicating that he had no communication difficulties. In the appeal record, the appellant states that he has "problems when I wake up in the morning because I can't breathe". He states that he uses his inhaler when he wakes, and that he has trouble sleeping because his breathlessness when he gets into bed triggers his

anxiety attacks. He adds that he gets between 2-3 hours of sleep per night.

With respect to daily living activities, the appellant states he is continuously restricted with his meal preparation, and is unable to cook things like meat as the smoke leaves him coughing. He says he is continuously restricted with transportation and social functioning as his "lungs won't let me go out to do things most people take advantage of". He adds that as a result of his inability to breathe, he gets light headed and faints, only to wake up in a "puddle of blood". He added that he has difficulty getting his mail, as he must climb stairs to come back to his apartment, and that he cannot carry his laundry to the laundry room; he uses a container on wheels to take his laundry back and forth. He stated that he is able to clean his apartment only once a month as a result of restrictions placed on him by his illness.

The appellant further states that in the winter he will not be able to leave his apartment because of the cold, and that he has had pneumonia four times. He adds that he is not able to afford the cost of his inhalers. He states that he is unable to weld because he can no longer lift anything over 30 pounds, and because the fumes from the gases affect his breathing. He states that his anxiety disorder triggers and he starts to cough. He adds that he has been taken to hospital by ambulance on several occasions in the past few months because he is unable to breathe. The appellant noted, however, that his anxiety disorder, and related anxiety attacks have diminished in frequency as a result of his decision to quit drinking.

In the appeal record, the ministry noted that while it acknowledges the appellant's severe COPD has had a significant impact on the appellant's ability to work, an inability to work is not a criterion for determining Persons with Disabilities designation. The ministry further stated that the appellant has been able to maintain a level of mobility and independence without the assistance of others, and without need of an assistive device.

At the hearing, the ministry representative stated that she did not support the ministry's finding regarding the severity of the appellant's decision. She said that the doctor has indicated that the condition is severe, chronic and incurable. She added that she saw no evidence from a doctor, however, that would demonstrate that the appellant's impairment has a continuous or periodic impact on his daily living activities, other than mobility, or that he requires assistance.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

Under appeal is the reasonableness of the ministry's reconsideration decision denying the appellant Persons with Disabilities (PWD) designation on the basis that he failed to meet several of the legislative criteria. The ministry found that the appellant met the age requirement, and has an impairment that his doctor has confirmed is likely to continue for at least two years. But the ministry was not satisfied that:

- the appellant has a severe physical or mental impairment
- the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities.

The criteria for being designated a Person with Disabilities are set out in Section 2 of the EAPWDA: 2(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.

Section 2(3)(b) of the EAPWDA states that 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.

Section 2(1)(a) of the EAPWDR defines daily living activities:

(a) in relation to a person who has a severe physical impairment or a severe mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication.

Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

ATTACH EXTRA PAGES IF NECESSARY

The ministry's position is that the appellant is not eligible for designation as a Person with Disabilities first because the information presented does not indicate that the appellant has a severe mental or physical impairment. The ministry argues that while the information indicates that the appellant's conditions cause some limitations to his functioning, these limitations do not result in a severe physical or mental impairment. The ministry further argues that the doctor has indicated that the appellant is independent with all activities of daily living, and thus that the appellant cannot be seen to be directly and significantly restricted as a result of his impairment. Finally, the ministry argues that the prescribed professional has not confirmed that the appellant requires an assistive device or animal, or significant help of another person, to perform his daily living activities.

The appellant's position is that his physician erred in filling out the form and that he suffers from a severe physical impairment. He argues that he is unable to perform many activities of daily living including walking more than a block, climbing stairs, and meal preparation. He also argues that his social functioning and communication is significantly limited. Finally, he states that he uses a bicycle and handrail as assistive devices, and that he is unable to do other activities for lack of help (for instance, cooking of meats).

With respect to the issue of a severe mental impairment, the panel notes the appellant's physician has indicated that the appellant suffers from an anxiety disorder. There is no narrative in the appeal record that would elaborate on the severity or impact of that diagnosis. At the hearing, the appellant stated that since he stopped drinking, the number of anxiety attacks he has suffered have diminished significantly. The panel thus finds that the evidence does not confirm that the appellant suffers from a severe mental impairment.

With respect to the issue of a severe physical impairment, the doctor notes that the appellant suffers from emphysema, severe COPD, and chronic bronchitis with regular attacks. The doctor notes that as a result of his physical impairment the appellant cannot walk more than 1 to 2 blocks, and that he takes twice as long as one would normally to walk indoors and outdoors, and to climb stairs. He notes that the appellant is not restricted in any other activity, other than to state that the appellant is unable to work under any condition that may require physical exertion. At the hearing, and in the appeal record, the appellant elaborated on the functional limitations that have resulted from his severe COPD – his inability to walk more than a block, to carry groceries or other items, to climb stairs without the assistance of a handrail. The panel finds, therefore, that the evidence does confirm that the appellant suffers from a severe physical impairment, and thus that the ministry's decision was not reasonable in this instance.

With respect to the limitations to daily living activities experienced by the appellant as a result of his impairments, the panel notes that the doctor has indicated that the appellant is independent in all aspects of daily living, including in his social functioning, other than in the areas mentioned above – that is, that the appellant takes twice as long when he walks indoors and outdoors, and when climbing stairs. The panel does not find that these impacts meet the test of "significant" required by the legislation. The panel is aware that the doctor's reports contradict the evidence provided by the appellant as to the impact of his illness on his daily living activities – however, the legislation is clear that, in making its decision, the ministry must rely on the opinion of a prescribed professional in this instance. The panel finds that a prescribed professional has not indicated that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either

continuously or for extended periods. The panel thus finds that the ministry's decision was reasonable in this instance.

With respect to the appellant's need for assistance, the panel notes that the doctor has indicated that the appellant is independent with all areas of daily living. He has further indicated that the appellant does not require an assistive device. He has left the question regarding the appellant's need for assistance from another person blank in the assessor report. The panel recognizes again that the doctor's reports contradict the evidence offered by the appellant, particularly with regard to his use of his bicycle to transport groceries, his use of a handrail to climb stairs, and his inability to perform certain activities, for example, cooking meat, in the absence of support. However, the legislation states that the ministry must rely on the opinion of a prescribed professional in this instance. The panel finds, therefore, that, in the opinion of a prescribed professional, the appellant does not require help to perform activities of daily living as a result of restrictions placed on him by his impairment. The panel thus finds that the ministry's decision was reasonable in this instance.

Given the findings above, the panel concludes that the ministry's decision was reasonably supported by the evidence and thus confirms the ministry's decision.