

**PART C – DECISION UNDER APPEAL**

The Decision dated February 08, 2010 denied the Appellant's application for designation as a Person with Disabilities. The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWDA) namely, the following criteria;

The minister is not satisfied that the Appellant has a severe mental or physical impairment

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

The minister is not satisfied that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistance animal.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act, sec 2  
Employment and Assistance for Persons with Disabilities Regulation , sec 2

## PART E – SUMMARY OF FACTS

The Appellant is diagnosed with post mva trauma pain, degenerative disc disease, Emphysema, chronic cough, and osteoarthritis in knee The Panel reviewed the evidence before the Ministry which included administrative information and the following:

- Request for Reconsideration January 7, 2010
- Reconsideration Decision dated February 8, 2010
- Physicians Report dated August 26, 2009 (PR)
- Assessor's Report dated September 4, 2009 (AR)
- Extracts from legislation
- Letter dated September 4 2009 from Personal Support Worker (PSW)
- Letter dated January 11, 2010 from PSW with attached medication list and internet descriptions
- GP Doctor's letter dated January 14, 2010
- Urologist Doctor's letter dated January 14, 2010

The Ministry stated that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD Act. The Appellant satisfied the criteria of age and duration of the impairment but the Ministry was not satisfied that the remaining 3 criteria were satisfied, namely, severity, restriction on performance of daily living activities (DLA's) and significant help required.

The Appellant's position is that he suffers from severe pain that makes it difficult for him to move around. Tylenol 3 and over the counter pain killers are not effective and due to acid reflux disease is unable to manage prescription pain killers. He suffers from clinical depression and is unable to function to perform daily living activities for himself or his disabled wife whom he used to care for. His evidence is that he has suffered from depression that has become worse in the last few years. His wife and his previous employer gave corroborating evidence of the Appellant's severe deterioration in the last few years. The Advocate summarizes that the Doctor reports that the Appellant is physically unable to work and that the inability to work correlates highly with an inability to perform physical daily living activities. She states that the evidence from the doctor is that the Appellant suffers from degenerative disc disease, and clinical depression that is not responding to medication even as the dosages are being adjusted. Physical weakness exacerbates the depression. He has had assistive devices installed in the bathroom. The assistive devices consist of shower handles and poles installed strategically from floor to ceiling to aid mobility on and off the toilet and in and out of the shower. He is unable to take care of his hygiene without these assistive devices. The evidence of the Appellant, the Assessor and his wife as witness, is that he is unable to do the basic housework and laundry. He is unable to do the grocery shopping and at times is unable to even get out of bed for extended periods of time. His employer gave oral evidence that he has become anti social which is completely contrary to his personality of a few years ago prior to the progression of his mental and physical impairments. His volunteer work had to end because he was not physically capable and the employer feared a heart attack. She reported that he lost enthusiasm and interest and appeared to have undergone a noticeable personality change. The Ministry did not object to the admission of the oral evidence of either of the two witnesses and the Panel accepted their evidence as information in support of material already before the Ministry pursuant to s. 22(4) of the EAA.

The Assessor indicates that the appellant needs help from other persons to do laundry, housework, shopping and transportation. He is significantly slower than others to do daily living activities and his mental impairment due to the clinical depression is severe. The Assessor completed the mental assessment in part B of the AR as the doctors indicate the Appellant is now diagnosed with Depression and it has not responded to medication. The Appellant is moderately or majorly impacted in 8 of 14 aspects under the heading Cognitive and Emotional Functioning. These include major impact on Bodily functions, Emotion, Motivation, Motor Activity, and other emotional or mental problems of frustration, depression, associated with sleep deprivation, pain and restrictions to activities. He is moderately impacted with Executive, Memory, and Motivation aspects.

The Ministry referred to the PR. The Doctor completed section D of the PR to describe Functional Skills. The Ministry submits that the evidence does not have sufficient information to establish that the Appellant has a severe mental or physical impairment. There is reference to a mental impairment only in Dr.K's letter of January 14, 2010 and states that it is a reactive depression due to urology problems and is being treated medically. Therefore a severe mental impairment has not been established. The Ministry states that a severe physical impairment has not been established as the doctor marks him as independent in all categories and does not rate him as severely restricted in the functional skills listed in section D of the PR. Therefore a mental impairment has not been established. The Doctor stated that "the Appellant is unable to work but manages well at home." The Ministry submits that the Assessor's answers to impact on daily living activities in Part B of the AR is not relevant.

The Ministry also summarizes the AR and finds that there is not enough detailed description of the restrictions to determine the degree of the Appellant's limitations. The Ministry states that since the evidence does not establish a direct and significant restriction to perform DLA's it cannot be determined that the Appellant requires significant help from an assistive device, another person or an assistance animal.

## PART F – REASONS FOR PANEL DECISION

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWD Act and Regulations. Sec 2 of the EAPWD Act lists five criteria that must be evident before a person may qualify as a person with disabilities under the Act as follows:

"(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."

In order to qualify for designation as a person with disabilities (PWD) as defined in the EAPWDA the Appellant's circumstances must satisfy all of the five criteria set out in Section 2 of the EAPWDA. The Ministry states that the Appellant has met the first two criteria of age and duration but has not met the remaining three criteria of severity, direct and significant restriction to daily living activities (DLA's) and the requirement of significant assistance from another person, assistive device or assistance animal to perform DLA's.

The Ministry's position is that the Appellant's doctor has not reported severe limitations to the Appellant's functional skills in Part D of the PR in questions 1-5 and he indicated there were no

significant deficits with cognitive and emotional function in question 6. In Part E the doctor reported no restrictions to all 10 aspects of DLA's in Part E of the PR and commented that the Appellant can manage well at home but not able to work at a job now. The Ministry submits that the Assessor reports the impacts on Daily Functioning in Part B of the AR for a person with an identified mental impairment or brain injury but submits that a brain injury or mental impairment has not been established.

The Appellant's position is that his condition is worsening and that he suffers from a severe physical and mental impairment. He is being treated by two doctors, one for a recent urological condition requiring hospitalization, and ongoing assessment and possible treatment as stated in Dr. P's letter of January 14 2010. The letter from Dr. K dated January 14, 2010 says that the Appellant has serious urological problems and has developed a significant depression requiring medical treatment. The Appellant's position is that this is medical evidence of a mental impairment corroborated by the evidence of the Assessor. The Assessor reports evidences that the Appellant is significantly and directly restricted from performing the great majority of DLA's. The Appellant submits that household chores are not being done at all and he desperately needs significant help to perform them from another person and he uses assistive devices daily.

Based on Dr. K's letter of January 14, 2010 which is dated subsequent to his PR, the Panel finds that the Appellant has a serious mental impairment and that it is being treated by prescription drugs noted in the material but is not yet responding well to treatment. The Assessor's Report indicates that the mental impairment was evident in September 2009 and the Employer who is not related nor a family friend of the Appellant corroborates the AR in reporting the noticeable change in the personality and abilities of the Appellant in approximately the last year. Based on Dr. K's letter, the corroborating evidence of the Assessor, the Appellant and the Witnessess the Panel finds that the Appellant has a severe mental impairment.

The Panel finds that the Appellant also suffers from physical impairments evidenced by Dr. P's letter, and Dr. K's letter that describe a serious urological problem that recently resulted in an extended period of hospitalization with an unsettled treatment plan as yet and will require periodic visits to Dr. P's office. These medical letters are more recent than the PR and describe a condition diagnosed after the physical impairments set out in the PR. The PR is brief and without many explanatory comments. It does not indicate the physical impairment significantly restricts his ability to manage at home based on the physical impairments at the date of the PR. However the Panel gives greater weight to the information on Daily Living Activities in the AR than the PR because it is thorough and provides a greater volume of information and specifics based on interviews, medical reports, and other sources noted by the Prescribed Professional. The Assessor has the skill to perform interviews at the Appellant's home and observe the home environment. The AR reports in Part B that the impact of the mental impairment on daily living activities is major in 5 aspects and moderate in 3 for a total restriction in 8 of 14 aspects. In part C the Assessor marked the Appellant as continuously restricted in 1 aspect, and uses an assistive device in 3 aspects, and takes significantly longer than typical in 13 for noted restrictions in 17 of 26 aspects. The Appellant was marked independent only for feeding self, reading prices and labels, choosing and paying for purchases as well as 6 aspects in the categories of paying rent and bills, and medications. In the social functioning category of DLA's applicable to persons with mental impairments the Appellant scored as requiring continuous or periodic support in 3 of 5 aspects and was noted as having marginal functioning in his immediate and extended social networks. Based on this evidence the Panel finds that a prescribed professional has confirmed that the Appellant is

significantly and directly restricted from performing daily living activities either continuously or periodically for extended periods.

The AR indicates that the Appellant has 3 assistive devices to assist him in the home, namely bathroom grab bars and a floor to ceiling pole to assist him on and off the toilet. He uses a specially designed chair in the living room that lifts him to an upright position to get himself up off his chair. In Part D of the AR the Assessor states that the Appellant needs help with housekeeping and laundry, and he could use an assistive device to get out of bed. The Appellant and his wife who is also suffering from a disability state that he is no longer able to manage the household without help from another person and that very little are being done. The evidence in the AR and of the witnesses also shows that the Appellant has become anti-social and functions marginally in his immediate and extended social networks due to his mental and physical impairments. The Panel finds that the Appellant requires significant assistance from another person and assistive devices to perform his daily living activities although at this time he is not getting the significant help required.

In summary the Panel finds that the Appellant has shown reasonable evidence that he has met the 5 criteria required for eligibility for the designation as PWD.

For these reasons the Panel finds that the Reconsideration Decision was not reasonably supported by the evidence and rescinds the Ministry Decision.