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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Decision under Appeal is the Ministry's Reconsideration Decision dated March 2nd, 2010, which denied the Appellant Persons With Disabilities designation. The Ministry accepted that the Appellant has met the age requirement and that a medical practitioner confirms that his impairment is likely to continue for at least two (2) years. The Ministry, however, is not satisfied that the Appellant has a severe mental or physical impairment, and a prescribed professional has not confirmed that the Appellant's impairment directly or significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods. Also, the Appellant's prescribed professional does not confirm that as a result of direct and significant restrictions the Appellant requires help to perform daily living activities. The Ministry, therefore, finds that the Appellant is not eligible for designation as a Person With Disabilities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

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

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 Panel was provided in part in the Appeal Record and in the oral testimony presented by the Appellant, the Appellant's witness, and the Ministry, all of which was admitted pursuant to Section 22 (4) of the EAA.

In the Appeal Record as part of the evidence were copies of the following documents:

1. The Appellant's Form EIA100 – Employment and Assistance Request for Reconsideration.
2. A letter dated February 10th, 2010 addressed to the Appellant's physician from his Advocate providing further medical information.
3. A copy of the Appellant's Persons With Disabilities application.
4. The Appellant's Self-Report which is part of the Disabilities designation application.

The evidence of the Appellant in the Physician's Report indicates the Appellant suffers from dyslexia and Crohn's disease. Under functional skills the Appellant's physician indicates the Appellant can walk four (4) plus blocks unaided on a flat surface, can climb five (5) plus stairs unaided, can lift five to fifteen (5 to 15) pounds, and has no limitations with respect to how long he can remain standing. The physician indicates the Appellant has severe problems with any written communication and the dyslexia causes considerable stress and depression with respect to cognitive and emotional functioning. The Appellant's physician has known the patient for eighteen (18) years and has seen him two to ten (2 to 10) times in the past twelve (12) months.

In the Assessor's Report, which was completed by the physician, the Assessor indicates the Appellant lives with his mother who is very supportive. On ability to communicate the Appellant's ability to read and write is poor due to dyslexia. The Assessor indicates that the Appellant needs continuous assistance from another person in the categories of lifting, carrying and holding and in the additional comments has indicated the Appellant will be unable to walk or climb stairs etc. when he has a flare up of his Crohn's disease which occurs almost once or twice a month and lasts a few days.

The Assessor indicates in the mental area of cognitive and emotional functioning that the dyslexia causes difficulties with memory and concentration and the Appellant has difficulties learning new material which is associated with depression and poor self-esteem and the impact on the daily functioning is moderate in the areas of sleep disturbance, attention, concentration, his executive thinking, memory and learning disabilities in the other neuro-psychological problems category. He indicates there is only a minimal impact with respect to the emotions, motivation and other emotional and mental problems.

With respect to daily living activities the Assessor indicates the Appellant is independent in all eight (8) categories of personal care. The Assessor indicates the Appellant needs periodic assistance from another person with respect to laundry and basic housekeeping and in the area of shopping needs continuous assistance from another person to read prices and labels and periodic assistance to carry purchases home.

The Assessor indicates the Appellant is independent in the areas of meal planning, safe storage of food, but requires periodic assistance from another person with respect to food preparation and cooking. The Appellant

is independent with respect to the categories of banking, budgeting, paying rent and bills and in the area of medication with respect to filling, refilling prescriptions, taking as directed and the safe handling and storage of medications. With respect to transportation the Appellant needs periodic assistance from another person with getting in and out of a vehicle, using public transit, but he is independent using transit schedules and arranging transportation. The additional comments of the Assessor indicates the Appellant's mother does most of the household chores especially if he has a flare up of his Crohn's disease which occurs about once or twice a month and lasts a few days. In social functioning the Appellant is independent in all categories with good functioning in his immediate social networks and good functioning in his extended social networks.

With respect to assistance provided by others the Assessor has checked off family and in comments sets out that the Appellant's mother acts as a caregiver and assists with any written communication as well as housework and shopping. There is no need for assistive devices or an assistance animal.

In a follow-up report from the Appellant's physician dated February 10th, 2010 prepared by the Appellant's Advocate which asks the Appellant's physician to agree or disagree with certain statements there is the following evidence:

1. The Appellant's physician agrees with the statements that the Appellant states that during his flare-ups he is unable to lift or carry, he is unable to make his bed, perform basic housework or do his laundry. He is also unable to prepare and cook his meals and that during flare-ups he has a great deal of difficulty with getting in and out of bed or on and off a chair due to the high level of pain. It takes him three (3) times longer or he just does not get up.
2. The Appellant's physician in this report indicates he disagrees with the Appellant's statement that on a daily basis he is weak and has very little energy and that it takes him significantly longer to get dressed, bathed or to care for his personal needs.
3. In the additional report the Appellant's physician puts a "no comment" with respect to the statements that the Appellant states that over the past couple of months his Crohn's disease has become much worse and his flare-ups are more frequent and last considerably longer although a flare-up is unpredictable they now last anywhere from one to two (1 to 2) weeks and the statement that the Appellant states that during these flare-ups he is unable to walk outdoors, stand in line ups at the bank, go to the grocery store or pick up his medication as he is in too much pain to be mobile so he stays home resting.

The Appellant in his Self Report indicates he has had Crohn's disease since he was in his teens and it has become so bad that he spends about ten (10) days at a time at least twice a month where he is unable to get from bed to bathroom and back. He states he has a stabbing pain from the top of his bowels down to the lower bowel, which causes him to double over. He states this causes him to tighten his hips and legs in terrible pain. With respect to his dyslexia he states that as a child he shuffled from school to school because he could not read or write like the others and now when something needs to be read he has mother read it for him. He states, with respect to mobility and physical ability, that during his frequent flare-ups he is unable to walk, stand, lift or do anything mobile and he has sometimes had to crawl to the bathroom because he could not get there and often does not make it in time. With respect to daily living activities the Appellant indicates with respect to his personal care that he just simply stays in his pajamas for many days at a time, does not shower or groom because the pain makes it too difficult. For meal preparation he states his mother prepares and cooks meals for him during these times and does all of the basic housework and laundry at these times. When he is sick he does not go to the store to shop, he does not leave the house at all and because his illness is unpredictable he does not use public transportation as it does not allow for the urgencies he experiences.

The Appellant in his oral testimony stated when he has a flare-up he cannot get up to cook, do laundry, basic housekeeping or even care for himself very well. He states he just lays around in a lot of pain. At this time his mom does everything for him. She even goes out to get his medications. He states he takes Tylenol 3 for pain and a Crohn's medication. The Appellant stated that he is going for further tests in the near future in which they will use a scope to check out his intestinal situation. He indicates he cannot eat most foods such as peas, carrots, pork, corn, and butter. He rarely has breakfast although he can have coffee. He states during these flare-ups his mother does all the cooking, all the laundry and all of the basic housekeeping. He lives in the basement of their home. The Appellant stated he cannot hold a job because of the flare-ups and his last job was in 2008 where he worked at a car dealership as a car detailer.

The Appellant also gave evidence that when he has a flare-up of the disease he eats very little as it will not stay in his stomach, he throws up. When he has a flare-up he does not go out, but otherwise he can go out. He has a vehicle and he can drive it.

The Appellant's mother in providing evidence stated that there are days when the Appellant cannot get out of bed or if he does he spends all day in his pajamas. She states she goes and gets his medication and she does the cooking, however he cannot keep much food down and he throws up all the time. She stated that in the past year the Appellant was so sick she did not think he would make it through the year. She states that sometimes he feels good and then he will go from feeling good to sitting up all night and being in very severe pain and unable to move around very much at all.

The Ministry provided no further evidence and restated its position set out in the Reconsideration Decision.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on Appeal is whether the Ministry's decision to deny the Appellant Persons With Disabilities Status was reasonable when it found that the Appellant did not meet three of the five criteria. The three criteria not met being as follows: (a) that he does not have a severe physical or mental impairment, (b) that a prescribed professional has not confirmed that the Appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and (c) that the Appellant's prescribed professional does not confirm that as a result of direct and significant restrictions the Appellant requires help to perform daily living activities.

Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) which states, "(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", sets out the criteria that have to be met to be granted the status of Persons with Disabilities under the legislation.

The Ministry in its Reconsideration Decision concluded that the Appellant met only two (2) of the five (5) requirements. The Ministry concluded that the Appellant did meet the age requirement and that the Appellant has a condition, which is likely to continue for at least two (2) years. The Panel examined the evidence to determine whether the other three criteria had been met:

1. Does the Appellant have a severe physical or mental impairment? The Ministry's position is that the Appellant does not have a severe physical or mental impairment based on the evidence of

the prescribed professional. The Ministry is of the view that while the Appellant has some degree of limitation the degree of limitation and the explanations related to it does not establish a severe impairment either physically or mentally.

The Appellant's position is that he suffers from severe physical impairment when his Crohn's disease flares up. He relies on the Assessor's Report that the Crohn's disease flares up once or twice a month and can last a few days each time, and that when it flares up he requires continuous assistance from another person with respect to lifting, carrying and holding, and requires periodic assistance in doing his laundry and basic housework, carrying purchases home from the store, food preparation, cooking, getting in and out of a vehicle and using public transit. The Assessor indicates this happens once or twice a month and can last a few days each time. When this happens he is unable to do most of his household chores. He also relies on the evidence of the physician and the Assessor that he suffers from dyslexia, his reading and writing is poor and he requires continuous assistance from another person for reading prices and labels. The Appellant also relies on his own evidence in which he stated that he spends about ten (10) days at a time at least twice a month unable to get from bed to bathroom and back because of the stabbing pain in his lower bowels. He states he often has to crawl to the bathroom and does not make it from time-to-time.

The Appellant also relies on the evidence in the follow-up request for further medical information in which the Appellant's physician has indicated he agrees that when the Appellant has flare-ups of his Crohn's disease he is unable to lift or carry, he is unable to make his bed, perform basic housework or do his laundry, and he is unable to prepare and cook his meals, and that he has a great deal of difficulty with getting in and out of bed, on and off chairs and due to the high level of pain it takes him at least three (3) times longer to get in and out of bed or on and off a chair, and he often just does not get up. With respect to mental impairment the Appellant relies on the evidence of the physician and the Assessor that he suffers from dyslexia and as a result he has a poor ability to read or write and he is unable to read labels and prices when shopping. The Appellant also relies on the evidence of the witness who stated the Crohn's disease attacks are severe and he is unable to get up or out of bed a lot of the times when he has the attacks. The witness states these attacks happen regularly and when they do he cannot do his cooking, cleaning, laundry or household activities. The Appellant takes the position that on the totality of the evidence of the physician, in the Physician's Report and in the Assessor's Report and the follow-up report combined with his own testimony and that of his witness that he does in fact have a severe mental and physical impairment.

The Panel in reviewing the evidence of the prescribed professional in both the Physician's Report, the Assessor's Report and the follow-up medical report and the supporting evidence provided by the Appellant and his witness finds that , there is insufficient evidence to establish the Appellant suffers from either severe physical or mental impairments. While the Appellant has difficulty in the area of reading prices and labels, he has sufficient ability to obtain and maintain a driver's license, read and understand traffic signs and directions, and to drive his vehicle. The evidence of the Assessor is that the Appellant's ability to communicate in reading and writing is poor and this category has been checked off rather than the "unable to do these" activities category. While there is no doubt that the Appellant suffers during his periods of Crohn's disease attacks there is limited evidence from either the Appellant's physician or his Assessor to indicate a length and severity of such episodes. The Panel does not find that the Appellant suffers from either a severe mental or physical impairment.

2. Has a prescribed professional confirmed that the impairments significantly or directly restrict the Appellant's ability to perform daily living activities either continuously or periodically for extended periods?

The Ministry takes the position that the evidence of the prescribed professional does not indicate the

Appellant's daily living activities are directly or significantly restricted either continuously or periodically for extended periods to any significant degree. The Appellant's physician in the Physician's Report and the Assessor's Report indicates the Appellant will be limited in his activities during flare-ups of his Crohn's disease which can occur about once or twice a month and can last a few days and he is limited at that time in the areas of requiring periodic assistance with his basic housekeeping, shopping, meals and transportation.

The Appellant's position is that he relies on the totality of the evidence that has been presented from his physician in the Physician's Report and the Assessor's Report and his physician in the follow-up medical report along with the evidence of himself and his witness. He relies on the follow-up medical report in which his physician agrees with his statement that during the times of his flare-ups he is unable to lift or carry, he is unable to make his bed, perform basic housework or do his laundry, he is unable to prepare and cook meals and that he has a great deal of difficulty getting in and out of bed or on and off a chair. He relies on his physician's and Assessor's evidence that when the flare-ups occur he cannot lift, carry or hold and requires assistance on a continuous basis as he is unable to do those activities. Also, when the flare-ups occur he requires periodic assistance from another person to do his laundry, basic housekeeping, carrying purchases home, food preparation, cooking, getting in and out of a vehicle and using public transit. He is of the view that he requires this periodic assistance for extended periods each month and requires this every month. However, there is limited evidence to establish the degree of assistance required or the length of time this assistance is required.

The Panel in reviewing the evidence in the follow-up medical report finds that while the Appellant's physician states that when the Appellant is having flare-ups of his Crohn's disease he is unable to lift or carry, unable to make his bed, perform basic housework, do his laundry, prepare and cook meals, or get in and out of bed or on or off a chair, but also notes the Appellant's physician disagrees with the statement when the Appellant states he is weak on a daily basis, has very little energy and it takes him significantly longer to get dressed, bathed and care for his personal needs. The physician also wrote "no comment" with respect to the statements of the Appellant that over the past couple of months his Crohn's disease has become much worse, the flare-ups more frequent and they last considerably longer and are unpredictable lasting from one (1) week to two (2) weeks and he has also provided "no comment" to the statement of the Appellant that during the flare-ups he is unable to walk outdoors, stand in line ups at the bank, go to the grocery store or pick up his medications because he is in too much pain to be mobile. The Panel finds there is limited evidence in the Physician's Report or Assessor's Report or even in his own testimony or that of the witness to indicate the Appellant requires much assistance with his daily living activities. The Panel notes that with respect to the majority of the activities that the Appellant requires periodic assistance with such as his laundry, basic housekeeping, carrying purchases home, getting in and out of a vehicle and using public transit are all activities that do not have to be done when there is a flare-up with his disease and could easily be put off until he is feeling well again. While the Panel notes he needs periodic assistance from another person with respect to food preparation and cooking when he has a flare-up of the disease, and realize that these are critical activities to be done each day, there is limited evidence in either the Assessor's Report or the Appellant's own testimony or that of his witness as to the degree of assistance required, and particularly so, in light of the evidence of the Appellant that when the flare-ups occur he is unable to eat or keep food down without throwing up and eats very little.

The Panel finds, based on the evidence of the prescribed professional in the Physician's Report, the Assessor's Report, and the follow-up medical report and in the testimony of the Appellant and his witness that the Appellant does not suffer from an impairment that significantly or directly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

3. Has a prescribed professional confirmed that as a result of those restrictions, the Appellant requires significant help or supervision of another person or the use of an assistive device to conduct his daily living activities?

The Ministry's position is that a prescribed professional has not confirmed that the Appellant's impairments significantly and directly restrict his ability to perform daily living activities either continuously or periodically for extended periods and therefore the Appellant does not require help to perform daily living activities.

The position of the Appellant is that when his Crohn's disease flares up he is unable to do food preparation, cooking, his laundry, basic housekeeping or carrying purchases home and that he relies on his mother to do these activities for him. The evidence of both the Appellant and his witness and the Assessor is that his mother does provide these activities during these periods of time.

The Appellant stated in his own evidence that he is able to drive his own vehicle and the Appellant's witness confirmed this that he does drive his vehicle from time-to-time provided he is not suffering one (1) of his attacks from Crohn's disease.

The Panel relies on the evidence of the prescribed professional and that of the Appellant and his witness and finds that there is insufficient evidence to conclude that the Appellant requires significant help or supervision to conduct his daily living activities. The Appellant's food preparation and cooking requirements are extremely limited when he does have an attack as he is unable to eat or keep food down, the daily living activities such as laundry, basic housekeeping and carrying purchases home can be conducted during periods of when he is feeling well and there is no clear evidence from the prescribed professional to indicate the length of time the periodic assistance is required.

The Panel finds that the decision of the Ministry is reasonably supported by the evidence and that there has been a reasonable application of the Act and Regulation in the circumstance of the Appellant. The Appellant therefore loses his Appeal and the Panel confirms the decision of the Ministry pursuant to Section 24 (2) (a) of the EAA.