

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision dated April 21, 2010 which held that the appellant did not meet 3 of the 5 statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for a person with disabilities designation (PWD). The ministry found that the appellant met the age requirement and that the impairment is likely to last more than 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that the daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with daily living activities, it could not be determined that the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal are required to perform daily living activities.

**PART D – RELEVANT LEGISLATION**

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

**PART E – SUMMARY OF FACTS**

The evidence before the Ministry was comprised of:

- The original application for PWD designation.
- The appellant's request for reconsideration.
- The physician (PR) and assessor (AR) reports both completed by the appellant's family physician.
- A note to B.C. Disability from the appellant dated February 22, 2010 stating that he had been referred to a neurosurgeon because of degenerating facitt disease.
- A letter dated March 1, 2010 from the neurosurgeon to the appellant's physician stating that the appellant is medically unfit for surgical intervention for his back problem.
- A letter from the appellant's physician to the ministry dated March 22, 2010, confirming that he had read the appellant's letter of March 12, 2010. It also noted that the appellant had scrotal abscesses and an umbilical hernia.
- A letter from the appellant to the ministry dated March 12, 2010 providing clarification as to his health conditions and abilities to perform daily living activities.

In the PR the appellant's physician states that the appellant suffers from the following:

- Lower back L5 Grade 1-2 reverse spandylolithesis resulting in chronic lower back pain.
- Morbid obesity – weighs more than 350 pounds.
- Diabetes
- Sleep apnea (on CPAC machine)

The appellant's physician describes the severity of his medical conditions as follows:

[Appellant] has:

1. Severe lower back pain – required to take high dose narcotics for pain control. Might benefit from surgery but cannot have MRI because of weight. Difficulty lifting and standing for extended periods.
2. Morbid obesity/diabetes in excess of 340 pounds. Has not been able to lose weight. Insulin dependent diabetic. Unable to exercise because of knee and back pain. Diabetes has led to several severe infections requiring hospitalization. Difficult time getting infection under control.
3. Sleep apnea – poorly tolerates CPAC. Restless, non-restorative sleep. Desideration event index = 51 indicating severe apnea.

The physician reports that the appellant has been prescribed narcotics, diuretics, insulin and sedatives and will need these forever. He also reports that it is unlikely any of the appellant's problems will improve due to his morbid obesity.

In section D Functional Skills the appellant's physician notes the appellant can do the following:

- Walk 2-4 blocks unaided.
- Climb 5+ steps unaided;
- Lift under 2 kilograms;
- Remain seated for less than 1 hour;
- Has no difficulties with communication;
- Has a deficit with cognitive and emotional function in emotional disturbance, motivation and attention or sustained concentration.

ATTACH EXTRA PAGES IF NECESSARY

The physician did not complete section E Daily Living Activities. The physician provided additional comment that the appellant had a multitude of problems that conspire to cause significant challenges with daily living activities. Back pain and obesity by themselves cause significant disability and with the diabetes requires medications. Appellant is in chronic pain and takes 11 different types of medication.

In the AR the appellant's physician again describes the appellant's physical and mental impairments. He reported his ability to communicate as good for speaking, writing and hearing. He described his Mobility and Physical Ability as follows:

- Independent for walking indoors, uses assistive device (cane) for walking outdoors, takes significantly longer for climbing stairs (uses elevator and avoids stairs), and independent for standing for short periods of time.
- Needs periodic assistance for lifting and carrying and holding.

In section B 4 Cognitive and Emotional Functioning the physician reports no impact in the areas of bodily functions; consciousness; impulse control; insight and judgment; executive; language; psychotic symptoms and other neuropsychological problems. He notes minimal impacts with emotion; memory; motivation and motor activity. In comments, he states that the appellant takes pain and narcotic medications, has memory difficulties and lowered motivation and movement.

In section C Daily Living Activities the appellant's physician reports that he is independent in 24 of 28 activities. He needs periodic assistance in 2 activities; basic housekeeping and carrying purchases home, continuous assistance with laundry and uses an assistive device for bathing. He notes that the girlfriend helps and has to do a lot and does the heavier tasks.

In the section for Social Functioning the appellant's physician reports that he is independent in all 6 areas.

In the AR, the physician notes that the appellant uses a cane, a walker and a CPAC machine. He notes that the appellant has significant morbidities and finds it very difficult to mobilize and can only do short distances and for short lengths of time.

In his letter dated March 12, 2010, the appellant notes that his condition has worsened over the last 8 months. When he was released from hospital he was receiving outside assistance every second day. His ex-girlfriend then moved in with him to assist him with cooking, cleaning, and laundry. She also administers his medications because he is not capable of doing it himself and often forgets to take them. She also takes care of his feet because he is not capable of doing so. He states that because of his deteriorating physical condition, he is going into a depressive state and breaks down emotionally everyday.

At the hearing, the appellant stated that he was hospitalized periodically from May to July and all of September because of infections due to diabetes. He stated that he was unable to care for himself when he was released and that he convinced his ex-girlfriend to move in with him to act as his caregiver.

The appellant stated that his physician telephoned him at 8 pm to complete the PR and AR. He

stated that he had just taken his pain medication and requested that he have an appointment to complete the forms. The physician wanted to do it immediately and the appellant felt rushed but complied.

The appellant also stated that he has only one kidney due to a gunshot wound received when he was 13 years old. He also stated that his weight problem was due to his medications and not to overeating. He has tried to lose weight but has not been able to exercise.

At the hearing, the appellant provided a written submission that included an assessor form, which he had completed on his own, and a list of his medications. The ministry representative did not object and the panel chair admitted the submission pursuant to section 22(4) of the EAA in support of the evidence that was before the ministry.

The ministry representative provided a submission outlining the ministry position but did not provide any new information.

**PART F – REASONS FOR PANEL DECISION**

The panel must decide whether the Ministry's decision to deny PWD status to the appellant was reasonable. The ministry was not satisfied that the appellant has a severe physical or mental impairment; that the appellant's prescribed professional does not confirm that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, that the appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, he requires help to perform daily living activities.

The EAPWDA, s. 2 sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities. "Help" is defined in s. 2(3)(b) of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

The appellant argues that he is not able to work, he cannot manage his medications, and he needs continuous assistance with cooking, cleaning and laundry. He argues that he would not be able to function without the assistance of his ex-girlfriend and that his physical problems are so severe that it is causing emotional and mental problems.

The ministry was not satisfied that the appellant met the remaining three criteria:

- The ministry found that the appellant has chronic pain and some limits to his functional abilities but that he can walk 5 blocks, climb 5+ stairs and manage the majority of his daily living activities independently. While acknowledging a degree of physical dysfunction the ministry was not satisfied that the appellant has a severe physical impairment.
- The ministry states that the appellant's physician reports that there are significant deficits in the areas of emotional disturbances, motivation and attention. However, he indicates that his impairments have minimal to no impact on his cognitive and emotional functioning. Therefore, the ministry concluded that the information provided does not establish that the appellant has a severe mental impairment.
- In terms of restrictions to daily living activities, the assessor's report indicates restrictions to bathing, basic housekeeping and carrying purchases home. He also indicates the need for continuous help with laundry. There is no restriction to other daily living activities including social

functioning. The ministry also states that although the appellant uses a cane for walking outdoors, the limitation is not severe because he is able to walk 2-4 blocks and climb 5+ stairs.

Based on the information provided by the appellant's physician in the appellant's PWD application, the ministry concluded that the appellant is not significantly restricted with daily living activities. Further, because the ministry has concluded that the appellant is not significantly restricted with daily living activities, the ministry found that it could not be determined that the appellant requires significant help or supervision of another person or the services of an assistance animal.

The panel finds that the appellant is suffering from severe physical impairments in his physician's opinion. He suffers from five separate impairments some of which require medications which themselves interfere with his ability to perform daily living activities. The physician in the PR refers to chronic to describe one medical condition. In addition he notes that back pain and obesity cause significant disabilities. In his March 22 letter, the physician states that his report shows "significant difficulties with activities of daily living." He also notes that he has read the appellant's March 12 letter detailing his numerous problems affecting his ability to be able to function on a daily basis and does not dispute the content of the letter. The panel finds that it was not reasonable for the ministry to conclude that the appellant does not have a severe physical impairment. The panel finds that the appellant meets criterion 2.

The panel finds that in the opinion of the appellant's physician, a prescribed professional, the appellant's impairments directly and significantly restrict his ability to perform daily living activities, either continuously or periodically for extended periods.

Although the physician indicates restrictions in only four of the aspects of daily living activities, his written comments and his letter of March 22 indicate otherwise and the panel finds that the written comments do indicate significant restrictions in the daily living activities. In the PR, the physician notes that a "multitude of problems conspire to cause significant challenges" with daily living activities. In his March 22 letter, the physician confirms that his report "shows significant difficulties with activities of daily living". The panel also notes that the appellant's impairments are significant because they are continuous. The physician clearly indicates that the appellant's restrictions are significant and continuous and the panel finds that it is not reasonable for the ministry to decide otherwise. The panel finds that the appellant meets criterion 4.

The panel finds that in the opinion of his physician as a result of the appellant's restriction in activities of daily living he requires help. He requires help from other people with personal hygiene, basic housekeeping, laundry, preparing his food and managing his medications. The panel finds the physician in his March 22 letter supports the appellant's oral and written evidence that he needs help with the daily living activities. The physician also states that the appellant uses a cane and a walker for basic mobility. The panel finds that the appellant does meet criteria 5.

The panel finds the ministry's reconsideration decision denying the appellant a PWD designation because the appellant did not meet all of the legislative criteria for approval is not a reasonable application of the applicable legislation in the circumstances of the appellant appealing the decision

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and, therefore, rescinds the ministry's reconsideration decision under Section 24(2)(b) of the EAA.  
The ministry reconsideration decision of April 21, 2010 is overturned in favour of the appellant.