



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In a reconsideration decision dated January 12, 2010, the Ministry denied the Appellant a Person with Disabilities designation because they concluded he did not meet 3 of the 5 statutory requirements for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement and met the requirement that his physical or mental impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because the information submitted by a prescribed professional did not establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict his ability to perform daily living activities and he does not require significant help or supervision of another person to perform daily living activities.

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 Ministry was a completed Person with Disabilities (PWD) designation application which included a physician report and an assessor report completed by the same prescribed professional. In the physician report, the prescribed professional states the Appellant has a T12 compression fracture and multiple degenerative discs. Under the section addressing the severity of the medical conditions, the prescribed professional noted the Appellant has severe back pain at times which the Appellant claims is worsening. The prescribed professional also notes the Appellant walks and moves well. He confirms the Appellant has not been prescribed with any medications or treatments that interfere with his ability to perform daily activities and that he does not require any aides for his impairment.

Under functional skills, the prescribed professional writes the Appellant can walk 4 plus blocks unaided, climb 5 plus stairs unaided, cannot lift, and can remain seated for less than 1 hour.

In the Assessor's report, the prescribed professional states the Appellant has severe, incapacitating, permanent back pain. He reports that the Appellant's daily living activities are unrestricted in all areas except lifting, carrying and holding. In the table of daily living activities, going to and from stores and carrying purchases are checked as needing periodic assistance, the other daily living activities are not checked and marked as non applicable. The Panel finds that degree of severity can be interpreted from this notation. The prescribed professional notes the Appellant needs assistance carrying and cleaning his yard.

In the applicant section, the Appellant submits he has had chronic back pain for over 3 years and has not been able to work for 2 years. He also states he cannot sit or stand in one place very long. He concludes that he cannot live on \$498 a month and will have to sell his property if he is not able to receive more money.

In the Appellant's request for reconsideration, the Appellant chronicles his attempts at working over the past 18 years, his injuries over that time, and his increasing inability to maintain employment.

At the hearing, the Appellant states his impairments are permanent and this fact should not be overlooked. He also states that he is unemployable. He submits that the lack of a permanent doctor has impeded the correct diagnosis and the severity of his disability, however he considers the prescribed professional that completed the PWD designation application as his current permanent doctor.

At the hearing, the Ministry reviewed the legislative criteria for PWD status and states the information provided in the PWD application was not sufficient to meet the criteria.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in the case is the reasonableness of the Ministry's decision to deny the Appellant a Person with Disabilities designation based on the Appellant not meeting 3 of the 5 necessary statutory requirements for PWD designation. The Ministry found the information submitted by a prescribed professional did not establish that the Appellant had a severe mental or physical impairment, the impairment does not directly and significantly restrict his ability to perform daily living activities and he does not require significant help or supervision of another person to perform daily living activities.

The criteria for PWD designation is set out in EAPWDA, Section 2 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 (B.C. Reg. 196/2007)

(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.

The definition of daily living activities is set out in EAPWDR, Section 2 as follows.

ATTACH EXTRA PAGES IF NECESSARY

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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.

The Ministry argues a severe physical or mental impairment has not been established, the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities, and that the Appellant requires help to perform those activities.

The Appellant argues his impairments are permanent and worsening and that he is not able to work.

The Panel finds the Appellant has a physical impairment however a severe physical impairment has not been established. The prescribed professional notes the Appellant can walk 4 plus blocks unaided, climb 5 plus steps unaided, and remain seated less than one hour. The prescribed professional also states the Appellant is not on any medication of treatment that interferes with his ability to perform daily activities and he does not require any aides for his impairment. Although the prescribed professional describes the impairment as "severe incapacitating back pain", the degree of severity has not been established because 23 of 33 daily living activities have been marked as "n/a" or not applicable by the same prescribed professional.

The Panel finds the PWD application does not establish that the Appellant's impairment significantly restricts his daily living activities. The prescribed professional in the assessor report states he is

independent in 31 of the 33 daily living activities. The only activities that he needs help with is, going to and from stores and carrying purchases home.

The Panel finds the PWD application does not establish that as a result of his impairment the Appellant requires significant help or supervision to perform his daily living activities. He is assessed as independent in 31 of 33 daily living activities and does not use assistive devices or assistive animals.

The Panel finds the Appellant does not meet all the statutory requirements for designation as a PWD.

The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.