

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated June 24, 2010 which denies the appellant's request for Persons with Disabilities (PWD) designation. The Ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The impairment does not directly and significantly restrict the appellant's ability to perform daily living activities; and
- The prescribed professional does not indicate that the appellant requires significant help or supervision of another person to perform the daily living activities restricted by the impairment.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
EAPWD Regulations, section 2

PART E – Summary of Facts

The appellant seeks PWD designation. His original application for PWD designation was made on November 18, 2009. On February 11, 2010, the Ministry denied that request. On April 29, 2010 the appellant submitted a request for reconsideration. On June 24, 2010, the Ministry completed its review of the request for reconsideration and again denied the request.

The evidence before the Ministry included the appellant's PWD application which included a physician's report dated November 3, 2009. The same physician also completed an assessor's report dated November 3, 2009, and a follow up medical letter dated March 2, 2010.

The physician's report diagnoses the appellant with multilevel disc disease. The physician notes that the vertebral disc degeneration began in 1995 with ruptured disks which have progressed since. The physician noted that the medical condition is permanent and is not treatable surgically.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 4+ blocks, can climb 2-5 steps, cannot lift, and can remain seated for less than one hour.

The physician notes also that the appellant has no difficulties with English communication, and does not suffer from any significant deficits with cognitive and emotional functioning.

The physician has not indicated any restrictions under Part E – Daily Living Activities and has not provided any additional comments with regard to the significance of the appellant's medical condition, the nature and extent of the appellant's impairment and the impact it has on his daily functioning.

The assessor's report is somewhat difficult to interpret at first glance, as the appellant appears to have made several initialed changes on the report to the assessor's findings. However, on close reading, it can be seen that the same physician indicates that the appellant is independent in 26 of 30 aspects of daily living activities. Specifically, the assessor indicates that the appellant is independent in all areas of personal care except transfers, laundry, all areas of shopping except carrying purchases home, all areas of meals, paying rent/bills, and medications. The physician notes that transfers, basic housekeeping, and carrying purchases home take significantly longer, and that the appellant is limited in his ability to carrying purchases home.

The assessor has not indicated any problems with the appellant's social functioning.

In Part D, the assessor notes that the appellant requires help for daily living activities from family and friends, and that the appellant uses a cane to help compensate for his impairment.

In the March 2, 2010 follow up letter from the physician, he summarizes the radiological findings of the appellant's lumbar spine. In his letter, the physician states that surgical options have been considered but the multilevel nature of the appellant's condition precludes this. The physician also states that all of the appellant's options have been exhausted and he remains unemployable owing to his back condition. He cannot stand or sit for prolonged periods, lift any heavy weights, or carry out such duties as sweeping a factory floor (straining his back and twisting) or acting as a parking lot attendant (again cannot sit or stand for prolonged periods).

The Ministry's position is that the appellant has not met all of the tests set out in the legislation for PWD status.

Specifically, the Ministry says:

- The minister is not satisfied that the appellant has a severe physical or mental impairment;
- The impairment does not directly and significantly restrict the appellant's ability to perform daily living activities; and
- The prescribed professional does not indicate that the appellant requires significant help or supervision of another person to perform the daily living activities restricted by the impairment.

The appellant contends that his disabilities are significant and that they have and will continue to worsen. The appellant has submitted a written summary of the nature and extent of how his various daily activities have been restricted. The panel has considered all of these restrictions as noted by the appellant in his written summary.

As part of his written submissions for this appeal, the appellant has included a further letter from his physician dated July 23, 2010. In this letter, the physician clarifies an earlier notation from 2009 and adds that even with medications, the appellant continues to experience continuous pain, aggravated by any attempts to do any kind of work. He concludes by saying that laboring is out of the question.

The panel has considered the new evidence submitted by the appellant and finds that it is admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the information and records that were before the Ministry when the original decision was made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for a PWD designation.

Section 2(2) of the EAPWD Act provides that 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) states that for the purposes of section (2)(2), 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 of the Regulations states as follows:

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.

(2) For the purposes of the Act, prescribed professional means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

[am. B.C. Reg. 196/2007.]

The Ministry agrees that the appellant has met the age requirement and the medical practitioner has confirmed the impairments are likely to continue for at least 2 years. However, the Ministry argues that the evidence falls short of proving that:

- the appellant has a severe physical or mental impairment;
- the impairment directly and significantly restricts the appellant's ability to perform daily living activities; and
- the appellant requires significant help or supervision of another person to perform the daily living activities restricted by the impairment.

The appellant argues that he does have severe physical impairments and that, by virtue of the fact that he suffers from an inability to labour, ongoing physical discomfort, and relies on family and friends for assistance, he is limited in his ability to perform various daily living activities. As a result, he contends that he should be eligible for PWD status.

With respect to whether or not the appellant suffers from a severe physical impairment, the panel considered the comments in the physician's report and the assessor's report, and in particular the comments made by the physician in his two follow up letters. Specifically, the physician comments that the appellant's lumbar problems are inoperable, cause him continuous and ongoing pain, and cause him to be unemployable. Given these comments, the panel concludes that it was unreasonable for the Ministry to conclude that the appellant does not have a severe physical impairment.

On the other hand, the panel finds that the Ministry's decision that the appellant does not suffer from a severe mental impairment was reasonable as there is nothing in the record to suggest any mental impairments, significant or otherwise.

The panel also considered the physician and assessor's report in terms of how the appellant's impairment affects his daily living. Both reports are very clear that, despite his impairment, the appellant is independent in most areas of daily living.

For instance, although the physician notes that the appellant cannot lift or remain seated for over an hour, the physician also notes that the appellant can walk 4+ blocks, can climb 2-5 steps, and has no difficulty with English communication.

With regard to the physician's most recent letter of July 23, 2010, although it does elaborate on the appellant's pain and confirm the ongoing nature of his impairment, it still does not offer any further information or details regarding the impact the impairment has on the appellant's daily functioning.

Turning to the assessor's report, it again confirms the appellant's independence by indicating that the appellant remains independent in 26 of 30 aspects of daily living activities.

Although the appellant no doubt faces ongoing discomfort as a result of his lumbar problems, the information provided by the physician indicates that the appellant has the ongoing ability to function independently on a day to day basis in most areas of his daily living activities. Therefore, the panel finds that the Ministry's decision is reasonable in so far it concludes that the impairments do not significantly restrict the appellant's ability to perform daily living activities.

Finally, despite the assessor's comments and appellant's comments that he relies on family/friends for assistance, the panel finds that as a result of the restrictions noted by the physician and the assessor, the Ministry's decision was reasonable wherein it concluded that the appellant does not require the significant help or supervision of another person to perform his daily living activities.

In summary, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.