

**PART C – Decision under Appeal**

The decision under appeal is the Ministry's Reconsideration Decision dated July 28, 2010, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The decision stated 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 (EAPWDA) for designation as a PWD. The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least 2 years. The ministry determined that:

- the information before the Ministry at reconsideration did not establish that the appellant has a severe physical and/or mental impairment;
- the information before the Ministry at reconsideration did not establish that the appellant's impairment directly and significantly restricts his ability to perform daily living activities (DLAs); and,
- The information before the Ministry at reconsideration did not establish that to perform directly and significantly restricted DLA's the appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

**PART D – Relevant Legislation**

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**

Information before the Ministry at Reconsideration included:

- the Appellant's Persons with Disabilities Designation Application, stamped as received by the Ministry January 18, 2010
- the Ministry's Persons with Disabilities Designation Decision Summary, dated April 6, 2010
- a copy of the Ministry's letter to the Appellant advising him of their decision, dated April 6, 2010
- The Appellant's Request for Reconsideration, dated May 5, 2010

At the hearing the Appellant provided a copy of his submission to the Panel which was admitted by the Panel for reference. The Appellant submitted a copy of a questionnaire that was endorsed by his physician, dated September 1, 2010. The Ministry had no objection to the admission of this document. The document was admitted by the Panel under Section 22(4)(b) of the Employment and Assistance Act as information in support of the information and records that were before the minister when the decision being appealed was made.

The physician confirmed that the Appellant has a severe medical condition which causes chronic pain that restricts his ability to perform daily living activities on an ongoing basis, and that he needs significant help from other people.

The Appellant gave oral evidence that was admitted by the Panel under section 22(4)(b) of the Employment and Assistance Act as oral testimony in support of the information and records that were before the minister when the decision being appealed was made. The Appellant stated that he has been diagnosed with complex regional pain syndrome (CRPS) and chronic myofascial pain, as confirmed by his physician in the application for PWD designation. He stated that these conditions were as a result of a workplace accident for which he had been treated through Worker's Compensation, including extensive treatment for pain. He stated that he is currently prescribed an opioid as well as 240 Tylenol 3 pills per month, as well as other pain medication.

The Appellant stated that his condition affects every aspect of his daily life due to pain. If he is able to be active for a period of time one day, he can do nothing for up to several days. He has sleep disturbance, he cannot tie his shoes or open containers due to pain. He lives in a suite where the landlord is familiar with disabilities because a family member has multiple sclerosis, and he is able to receive a great deal of assistance there. The Appellant stated that he receives assistance with cooking, cleaning, laundry and shopping.

The Appellant stated that he is not appealing the Ministry's determination that he does not have a severe mental impairment.

The Ministry responded that their decision was based on the information that was before them.

The Appellant's application for PWD designation states his diagnosis as complex regional pain syndrome and chronic myofascial pain. Although the physician, who completed both the Physician and Assessor sections of the form, indicated that the Appellant has restrictions due to his condition, there is no information about the frequency, duration or extent of the restrictions and the restrictions are noted as occurring when he is symptomatic, and are noted as moderate. The Ministry therefore could not determine that the Appellant has a severe physical impairment. As no information was provided to explain the deficits to cognitive and emotional function that were noted, the Ministry could not determine that the Appellant has a severe mental impairment.

With respect to restrictions on daily living activities (DLA's), the physician reports that the Appellant independently completes many DLA's. Although the physician reports that the Appellant requires periodic

assistance with laundry, basic housekeeping, carrying, paying rent and bills and using public transit, there is no information to explain the frequency, duration or extent of assistance required. Therefore, the Ministry could not determine that DLA's are restricted to a significant degree.

With respect to the Appellant's physical impairment the Panel's findings of fact are:

- the appellant's physician is a prescribed professional pursuant to the *EAPWDR*, s.2 (2) (a);
- In the Application for PWD Designation the Appellant's physician indicated that his impairment will continue for two years or more;
- The information provided by the Appellant's physician, admitted at the hearing, together with the Appellant's oral evidence, establishes that his physical condition is severe when taken together with the information provided in the original Application for PWD Designation.

With respect to the Appellant's mental impairment, the Panel's findings of fact are:

- the information contained in the original Application for PWD designation and the Appellant's oral evidence admitted at the hearing do not establish a severe mental impairment.

With respect to the Appellant's DLA restrictions, the Panel's findings of fact are:

- the Appellant is noted as restricted in basic housekeeping, laundry, shopping, mobility, management of medications and carrying;
- The Appellant has given evidence that he is restricted in the performance of DLA's on a continuous basis.

With respect to the Appellant's requirement for help to perform DLA's, the panel's findings of fact are:

- in the original application for PWD designation, the Appellant's physician noted that friends provide assistance;
- in the written information that was admitted by the Panel, the Appellant's physician confirmed that he need significant help to perform DLA's
- the Appellant stated that he receives significant assistance from friends with shopping, laundry, cleaning and cooking.

**PART F – Reasons for Panel Decision**

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a Person with Disabilities (PWD).

**EAPWDA:**

2 (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.

(4) The minister may rescind a designation under subsection (2).

**EAPWDR:**

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.

The Appellant's position is that the original PWD application and additional material supplied by him provide sufficient evidence to support a designation of Person with Disabilities (PWD). The information confirmed by his physician establishes that his condition is severe, that it directly and significantly affects his ability to perform DLA's and that he requires significant assistance to perform them.

The Ministry's position is that the information provided by the Appellant in his application for designation as a PWD does not establish that his mental or physical impairment is severe, that his impairments directly and significantly restrict his ability to perform DLA's, either continuously or periodically for extended periods, nor that he requires help to perform DLA's from an assistive device, the significant help of another person or the services of an assistance animal.

With respect to whether the Appellant has a severe mental impairment, the Panel notes that there is an indication of a mental impairment in the information provided by the Appellant, however the information does not support a determination of severity. The Panel finds that the Ministry's determination that the Appellant does not have a severe mental impairment was reasonable.

With respect to a severe physical impairment, the Panel notes that the information provided by the Appellant indicates that his physical functioning is impaired on a continuous basis, relieved periodically by pain medication. His functional skills are described by his physician as limited when he is symptomatic, which the physician confirmed as daily. The Panel therefore finds that the Ministry's determination that the Appellant does not have a severe physical impairment was not reasonable.

With respect to the Appellant's ability to perform daily living activities, the physician reported that the Appellant is restricted in several areas. The Appellant's evidence and that of the physician in the document admitted by the Panel at the hearing indicate that the Appellant is severely restricted in any activity requiring movement. The Panel finds that the Ministry's determination that the Appellant's impairment does not directly and significantly restrict his ability to perform DLA's was not reasonable.

With respect to a requirement for assistance, the Panel notes that the Appellant's physician indicated that he receives assistance from friends. The Appellant's evidence is that he lives in a situation where he receives

help from his landlord's family with shopping, cleaning, cooking and laundry. The Appellant's physician confirmed that he requires assistance on a daily basis. The Panel finds that the Ministry's determination that the Appellant does not require the significant help of another person to perform DLA's was not reasonable.

The Panel finds that the Ministry's decision to deny the Appellant's application for PWD designation was not reasonably supported by the evidence. The Panel therefore rescinds the Ministry's decision.