

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry's reconsideration decision dated December 29, 2009, which held that the appellant did not meet all of the legislative criteria required for designation as a person with disabilities (PWD) under section 2 of the Employment and Assistance for Persons with Disabilities Act. The Ministry concluded:

- That the appellant did not have a severe mental or physical impairment and
- The prescribed professional did not confirm that his impairment directly and significantly restricted his ability to perform daily living activities and
- The prescribed professional did not confirm that as a result of direct and significant restrictions, the appellant required help to perform daily living activities.

## **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

The evidence before the Ministry at reconsideration included

- An application for PWD designation dated July 23, 2009.
- Physician Report, dated July 10, 2009, completed by the appellant's doctor.
- Assessor Report, dated July 15, 2009, completed by the appellant's doctor

The appellant presented 4 sets of documents to the Panel at the start of the hearing. All but one of the documents constitutes copies of records from a federal prison and related to the appellant's medical history while he was incarcerated. The appellant said he requested these documents earlier but only received them a few days prior to the hearing. They are as follows:

1. Doctor's Orders and Progress Notes
2. Radiology Report dated July 28, 2008.
3. Medical Imaging Report dated October 1, 2008
4. A Prison Services Medical Permit dated February 20, 2008
5. A computer printout dated August 19, 2008 dealing with Tietze's Disease.

The Panel studied the documents. There was no objection from the Ministry at the hearing to their admission. The Panel decided to admit all but the computer printout as evidence in support of the appellant's medical condition, pursuant to section 22(4) of the Employment and Assistance Act. The appellant was advised the Panel would decide later what weight, if any, to give the documents.

The Ministry concluded that the appellant did not have a severe physical or mental impairment; that his impairment does not significantly restrict his ability to perform daily living activities and that he does not require the significant help or supervision of another person to perform his daily living activities. The Ministry noted that the appellant's doctor, who completed both the Physician Report and the Assessor Report, indicated the appellant was independent in the majority of his daily living activities and clearly stated he did not require assistance with daily living activities from another person, from assistive devices, or from an assistance animal.

In the Physician Report, the doctor states the appellant suffers from angina, hypertension and arthritis and requires ongoing medication for these ailments. The doctor also states in the Physician Report that the appellant is directly restricted in his ability to perform daily living activities but contradicted himself by checking "No" to all items in Section E, except for basic housework and mobility outside the home, which he checked as periodic, and also stated the appellant did not require assistance from another person to perform his daily living activities.. The doctor also indicated in the Physician Report that the appellant could walk 4+ blocks climb 2 to 5 steps and lift 15 to 35 lbs but then states in the Assessor Report, Part B, that the appellant has "chronic back pain if heavy lifting". Also, in the Assessor Report, Part C, the doctor deems the appellant independent in all daily living activities except going to and from stores, carrying purchases home and getting in and out of a vehicle.

The appellant informed the Panel he accepted the decision of the Ministry now that he had had an opportunity to study it more. He now understands how the Ministry came to the decision and feels his doctor let him down when completing the Physician and Assessor Reports.

The Panel studied the new evidence presented by the appellant:

1. The Doctor's Orders and Progress Notes make one reference to constant back pain on August 19, 2008, and one reference to chest pains on March 4, 2008.
2. The Radiology Report dated July 28, 2008 was for lung x-ray and noted a mild shadowing in the left lung but they were otherwise clear.

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3. The Medical Imaging report dated October 1, 2008 involved a barium meal test and the stomach and duodenum were reported as unremarkable.
  4. The Prison Services Medical Permit described the appellant as having a heart condition and excused him from heavy duties.
  5. The computer printout regarding Tietze's Disease was given no weight whatsoever as there was no indication it referred to the appellant.

The Panel decided that the documents presented as new evidence serve to document a history of back pain dating back to August, 19, 2008 and chest pains from at least March 4, 2008 as well as a heart condition which excused him from heavy duties while incarcerated. The Panel decided, however, though they collectively show a pattern of back and chest complaints, these documents should be given little weight because they lacked the detail to specifically support the evidence in the Physician and Assessor Reports.

## PART F – REASONS FOR PANEL DECISION

The issue to be decided in this appeal is whether the ministry reasonably concluded that the appellant does not meet the legislative criteria to be designated as a PWD under section 2 of the EAPWD Act because :

- the appellant does not have a severe mental or physical impairment and
- in the opinion of a prescribed professional, his daily living activities are not directly and significantly restricted either continuously or periodically for extended periods and because,
- in the opinion of a prescribed professional, he does not require the help of another person to perform daily living activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The ministry must be satisfied that the person is over 18, has a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to continue for at least 2 years and, that in the opinion of a prescribed professional directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWDR defines "daily living activities" in relation to persons who have a severe physical or mental impairment.

The Ministry evidence was that the appellant's doctor had deemed him to be independent in all but three of his daily living activities, those being going to and from stores, carrying purchases home and getting in and out of a vehicle. The doctor had also stated in the Physician report, part E, that the appellant did not require any assistance from another person with his daily living activities.

The appellant stated at the hearing that he now understood how the Ministry reached its decision and that he agreed with it. He stated his doctor did not do a very good job on the Physician and Assessor Reports.

The Panel finds as fact that the appellant has failed to demonstrate that he meets the criteria for PWD designation. The evidence does not support a finding that he suffers from a severe physical impairment. Although the doctor diagnosed angina, hypertension and arthritis and states in the Physician Report that the appellant has chronic joint pains that cause restricted movement, he also indicated the appellant can walk 4+ blocks, climb 2 to 5 steps and lift 15 to 35 lbs. The doctor, in the Assessor Report indicates the appellant is independent in all daily living activities except going to and from stores, carrying home purchases and getting in and out of a vehicle. The doctor's evidence was contradictory inasmuch as he stated in Part E of the Physician Report that the appellant was directly restricted in his ability to perform daily living activities and on the same page stated the appellant does not require assistance from another person to perform his daily living activities.

The Panel also finds the appellant does not have a severe mental impairment. The doctor indicates in the Assessor Report that the appellant has "depressed mood and poor memory" and difficulty with self-esteem but states the appellant only requires period support/supervision in this regard.

The Panel finds the appellant does not have a severe physical or mental impairment and that his impairment does not directly and significantly restrict his ability to perform daily living activities. The Panel also finds that the appellant does not require the assistance of another person to perform daily living activities.

The Panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.