

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Decision under Appeal is the Ministry's Reconsideration Decision dated December 18th, 2009, which denied the Appellant Persons With Disability Status. The Ministry accepted that the Appellant is over eighteen (18) years of age and that the Appellant's medical professional has confirmed that the Appellant has an impairment that is likely to continue for two (2) years or more. The Ministry is not satisfied that the Appellant has a severe physical or mental impairment. Also, the Ministry is not satisfied that a prescribed professional has confirmed that the Appellant's 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 the Appellant requires help to perform daily living activities.

The Ministry finds that the Appellant is not eligible for Persons With Disability Status, as all of the legislative criteria have not been met.

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 Panel was provided in the Appeal Record, which was admitted pursuant to Section 22 (4) of the EAA.

In the Appeal Record as evidence were copies of the following documents:

1. The Appellant's Form EIA100 – Employment and Assistance Request for Reconsideration.
2. A letter addressed "To Whom It May Concern" from the Appellant's physician dated November 27, 2009.
3. Copy of the Appellant's Person With Disabilities designation application.
4. Letter from the Ministry adjudicator to the Appellant dated November 16th, 2009.
5. Medical Report – Employability with respect to the Appellant dated March 27th, 2009.

The Appellant's Advocate provided a written submission on behalf of the Appellant, this was part of the Appeal Record provided to the Panel and this written submission on his behalf was considered.

The evidence of the Appellant contained in the Physician's Report indicates the Appellant suffers from epilepsy, substance related disorders and mechanical back pain. In the letter of November 27, 2009 the Appellant's physician sets out that he also suffers from Hepatitis C, the fatigue it creates and has responded negatively since taking anti-convulsions. The Appellant, according to the prescribed professional has frequently injured himself during seizure activity and experiences post-concussion syndrome and persistent headaches that last up to seven (7) days post seizure. The Appellant's prescribed professional, in a follow-up letter, in answer to the question whether his patient has severe mental or physical impairments, if so, please explain, was required to answer the question only if the Appellant had a severe physical or mental impairment in his opinion. The Appellant's physician answers in detail referring to fatigue, impaired concentration and memory, especially after seizure activity and difficulty doing his daily living activities for up to four (4) days post seizure because of injury and chronic back issues that get aggravated by the seizures. The Appellant's prescribed professional in the Assessor's Report under mobility and physical ability, indicates the Appellant has seizures at least four (4) times per month, at unpredictable times and requires complete care when this occurs, for up to six (6) hours. The prescribed professional explained these are grand-mal seizures. The prescribed professional has described that the Appellant has difficulty doing his daily living activities for up to four (4) days post seizure, has chronic back pain post seizure for up to two (2) weeks and has headaches post seizure for seven (7) days. In the physician's report he indicates that the Appellant does take anti-convulsion medication every day but still has the seizures in spite of the medication. In the Physician's Report the prescribed professional has described under "Functional Skills" that the Appellant can walk unaided four (4) plus blocks on a flat surface, can climb five (5) plus stairs, can lift fifteen to thirty-five (15 to 35) pounds and can remain seated for one to two (1 to 2) hours. In the area of cognitive and emotional functioning the Appellant's physician has indicated there are significant deficits in the areas of consciousness, memory, motor activity, attention or sustained concentration and loss of consciousness.

The Appellant's prescribed professional, who completed the Assessor's Report, sets out in the area of mobility and physical ability, the Appellant requires periodic assistance from another person with respect to walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. He indicates the Appellant uses an assistive device, a cane, with respect to his walking outdoors. He adds the comment that the Appellant requires complete care for six (6) hours after a seizure and that with respect to lifting, carrying and holding of items, it takes two to three (2 to 3) times longer than would be normal.

The Appellant's prescribed professional in completing the Assessor's Report, under cognitive and emotional functioning, has indicated the Appellant suffers major impacts with respect to bodily functions, consciousness, attention concentration, memory, and his motor activity. He indicates there is a moderate impact on his daily functioning with respect to his emotions, impulse control, insight and judgment, executive, motivation, language, psychotic symptoms, other neuropsychological problems, and other mental problems for which he provides the comment that it is a major impact when the patient has a seizure, for up to six (6) hours post seizure.

With respect to daily living activities, in the area of personal care, the Assessor has indicated the Appellant requires periodic assistance from another person with respect to dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, and transfers on and off of chairs. When he is able to do it on his own the Assessor has indicated the Appellant takes significantly longer than typical with respect to dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, and transfers on and off of chairs, doing laundry, basic housekeeping and going to and from stores. With respect to other daily living activities the Assessor has indicated the Appellant requires periodic assistance from another person in the areas of meal planning, food preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling and refilling prescriptions, taking prescriptions as directed, safe handling or storage of medications, getting in and out of a vehicle, using public transportation, and using transit schedules and arranging transportation. The Assessor provided the additional comment that six (6) hours post seizure he requires complete care, that he has a roommate who is supportive and there are at least four (4) seizures per month. The physician, in his additional comments, indicated the Appellant's seizures have resulted in head injuries, and the subsequent post-concussion syndrome. He indicates the Appellant is compliant with investigations and medical appointments and that he requires company when traveling outside the home for support because of his seizure potential.

The Assessor sets out under Section D, Assistance Provided for the Applicant, that the Appellant gets the required help for his daily living activities from friends and from health professionals. He indicates the Appellant uses a cane when ambulating outdoors, he uses a cart for groceries because he is unable to carry groceries and that required equipment for him is Life Line which was not used at the time of the completion of the application. He indicates the Appellant requires the Life Line Emergency Response system, which could be activated even though his speech, memory and orientation were being impaired as the seizure started to come on.

The Ministry provided no evidence beyond what was contained in the Appellant's application and follow-up medical report. The Ministry relied on the evidence in the Appeal Record and its position as set out in the Reconsideration Decision.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on Appeal is whether the Ministry's decision to deny the Appellant Persons With Disability status was reasonable.

Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) which states, "(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", sets out the criteria that have to

be met to be granted the status of Persons with Disabilities under the legislation.

The Ministry in its Reconsideration Decision concluded that the Appellant met only two (2) of the five (5) requirements. The Ministry concluded that the Appellant did meet the age requirement and that the Appellant has a condition, which is likely to continue for at least two (2) years. The Panel examined the evidence to determine whether the other three criteria had been met:

1. Does the Appellant have a severe physical or mental impairment?

The Ministry's position is that the Appellant does not suffer from a severe mental or physical impairment based on the evidence of the prescribed professional. The Appellant's position is that he suffers from a severe mental and severe physical impairment as a result of the epilepsy, mechanical back pain, and Hepatitis C. He relies on the evidence of his prescribed professional that describes that he has grand-mal seizures at least four (4) times per month which leave him totally disabled during the six (6) hours around the seizure. He then has difficulty with his daily living activities for up to four (4) days post seizure and suffers from chronic back pain for up to two (2) weeks post

seizure and has headaches for seven (7) days post seizure. He relies on the evidence of the prescribed professional who has described the severity of the physical and mental impairment.

The Panel, based on the evidence of the prescribed professional in the physician's report, in the follow up medical letter of November 27, 2009, and in the medical employability report with respect to the Grand Mal Epilepsy seizures and the Hepatitis C, and in particularly the evidence that the Appellant's conditions will all last more than two years finds that there is sufficient evidence to conclude that the Appellant does suffer from both severe mental and physical impairments and therefore finds that the Appellant does have severe mental and physical impairments.

2. Has a prescribed profession confirmed that the impairment significantly and directly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods?

The Ministry takes the position that the evidence of the prescribed professional does not indicate the Appellant's daily living activities are directly or significantly restricted either continuously or periodically for extended periods.

The Appellant takes the position, relying on the evidence of the prescribed professional, that he requires periodic assistance from another person with almost every aspect of each activity of daily living due to unpredictable seizure activity, post seizure impacts and chronic back pain. The physician has reported the Appellant has at least four (4) seizures per month and difficulties with daily living activities that often last four (4) days after a seizure due to injury. He also takes the position that his prescribed professional has confirmed that he is significantly restricted in his ability to perform the daily living activities referencing the fatigue, side effects to medication, chronic back pain, poor concentration, and restrictions in the areas of his personal care routines, grocery shopping, and other activities.

The Appellant's prescribed professional in completing the Assessor's Report indicates the Appellant needs periodic assistance from another person with respect to walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. He indicates that when he can do these activities it takes significantly longer, usually two to three (2 to 3) times longer than other people with respect to climbing stairs, carrying and holding, and lifting. With respect to daily living activities the Appellant's prescribed professional, in the Assessor's Report, indicates he needs periodic assistance from another person with respect to dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, and transfers on and off of chairs. He indicates that when the Appellant is not suffering from seizure activity it takes him significantly longer than typical, usually two to three (2 to 3) times longer than when he was healthier to complete the activities of dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed, transfers on and off of chairs, basic housekeeping, and going to and from stores. He uses an assistive device, grocery carts to carry his purchases home.

The prescribed professional in completing the Assessor's Report indicates the Appellant requires periodic assistance from another person with respect to meal planning, food preparation, cooking, safe storage of food, banking, budgeting, paying rent and bills, filling prescriptions, taking medications as directed, safe handling and storage of medications, getting in and out of a vehicle, using public transportation, and using transit schedules. He indicates the Appellant requires complete care for six (6) hours post seizure and periodic assistance after that until he recovers sufficiently to do it on his own.

The Panel finds, based on the evidence of the prescribed professional in the Assessor's Report and

in the follow up letter of November 27, 2009, that the Appellant does suffer from an impairment that significantly and directly restricts the Appellant's ability to perform his daily living activities either continuously or periodically for extended periods.

3. Has a prescribed professional confirmed, that as a result of those restrictions, the Appellant requires significant help or supervision of another person, or the use of an assistive device to conduct his daily living activities?

The Ministry's position is that a prescribed professional has not confirmed that as a result of the direct and significant restrictions the Appellant requires help to perform daily living activities.

The position of the Appellant is that he uses a cane to move about outdoors, he uses a cart to do his grocery shopping and get his groceries home, and he requires someone to go out with him when he goes outside of his residence because of the possibility of seizures. The prescribed professional, in completing the application form and in the follow-up medical information confirms that the Appellant requires company when traveling outside the home for support due to seizure potential. He indicates the Appellant requires assistive devices such as Life Line, which is an emergency response system, and a cane for outdoors and a cart for groceries. He also notes that the Appellant relies on his roommate and other people, along with health professionals for ongoing help. In the follow-up medical letter the Appellant's physician has indicated that the Appellant requires significant help with daily living activities from assistive devices and other people. The Appellant's prescribed professional has confirmed that when the Appellant has a seizure he requires care during the seizure and for up to six (6) hours afterwards on a continuous basis and this occurs at least four (4) times per month. He confirms that the Appellant then needs help for up to four (4) days after each seizure with respect to his daily living activities.

The Panel, after reviewing the evidence, relies on the evidence of the prescribed professional and finds that there is sufficient evidence to conclude that the Appellant requires the significant help or supervision of his friends, health professionals, and the assistive devices of a cane and cart to conduct his daily living activities.

The Panel finds that the evidence does not reasonably support the decision of the Ministry and that there has not been a reasonable application of the Act and Regulation in the circumstance of the Appellant. The Panel therefore rescinds the decision of the Ministry pursuant to Section 24 (2) (b) of the EAA.