

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In a reconsideration decision dated July 30, 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 professionals 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) Sections 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 completed by the Appellant's physician, an assessor report completed by a social worker and a personal statement from the Appellant.

In the physician report dated May 30, 2009, the physician states the Appellant has a neurological disorder called Charcot-Marie-Tooth disease Type 1-A. Under the section addressing the severity of the medical conditions, the physician noted the Appellant has clumsiness of his hands. He confirms the Appellant has been prescribed with medications that make him drowsy and that interfere with his ability to perform daily activities. He states that Appellant does not require any aids for his impairment.

Under functional skills, the physician writes the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, can lift 7 to 16 kilograms and has no limitations on remaining seated.

The physician states the Appellant's daily living activities are restricted and specifies meal preparation, basic housework, and mobility outside the home are restricted continuously, the other 6 daily living activities are checked as not restricted. The physician notes the Appellant is clumsy and weak in the hands and his condition will get worse. He also notes that eventually that Appellant will need splints for his arches and feet to prevent foot drop and tripping.

The physician attached several medical reports that confirm the Appellant's diagnosis. The summary of one of the reports, dated November 4, 2008 states "There is no current treatment to reverse or slow the natural disease process. The only treatment is that of adaptive aids to assist in mobility or in activities of daily living function. This man will have a slowly progressive weakness in his hands and in his feet."

In the assessor's report dated June 11, 2009, the assessor states the Appellant's impairments are Charcot-Marie-Tooth disease Type 1, anxiety and depression. In the mobility and physical ability section the assessor states the Appellant needs continuous assistance in all activities except standing and the Appellant takes significantly longer than typical to perform all activities. The assessor notes the Appellant's mobility is affected by pain, loss of circulation, numbness and weakness of limbs.

Under the cognitive and emotional functioning section, the assessor states the Appellant is severely depressed. Also a recent marriage breakup, health concerns and the care of his children are causing him anxiety. The assessor states the Appellant is receiving regular counseling.

ATTACH EXTRA PAGES IF NECESSARY

In the daily living activity section, the assessor states the Appellant takes significantly longer in 19 of 34 of the identified daily living activities, specifically personal care, basic housekeeping, going to and from stores, carrying purchases, meal preparation and cooking, getting in and out of vehicles and using public transportation. He also notes the Appellant needs continuous assistance in 3 activities (carrying purchases home, getting in and out of a vehicle, and using public transit).

The assessor states the Appellant is marginally functioning in his social networks, lacks interest and motivation and is severely depressed.

The assessor specifies the Appellant requires help with housekeeping, cooking and cleanup, transportation and shopping. He also notes his ability to drive may be at risk. The assessor states the Appellant has minimal contact with his family and looks to friends and health professionals for assistance.

The Appellant's personal statement explains he has been diagnosed with Charot-Marie-Tooth disease a year ago and also suffers from anxiety and depression. He states his pain is located throughout his extremities and joints. He states the muscle cramping, burning, numbness, shakiness and weakness has increased since his diagnosis last year.

The Appellant says he struggles constantly with meal preparation, cleaning, housework and shopping for himself and his young children. He says he cannot complete these tasks without starting and stopping because of the numbness, pain and cramping. He says he has few friends and no one to help him. He explains that the same pain and weakness occurs when he walks and attempts to carry items, thus making shopping difficult.

The Appellant states his medical condition has made him extremely depressed. He says he is seeing a counselor to help with his anxiety and depression and is taking Prozac.

At the hearing, the Appellant's advocate submitted the Appellant has a severe physical impairment that restricts his ability to perform daily living activities. He submitted the Appellant also needs significant help or supervision to perform his daily living activities.

The first witness, a Family Counselor with a Bachelor of Psychology that has been seeing the Appellant once or twice a week for the past 2 years. He states the Appellant can only minimally maintain community standards in housekeeping and meal preparation due to his deteriorating balance and weakness in his hands. He states that he believes the Appellant is cognitively impaired, reads at a Grade 3 level, is challenged with emotional regulation and in his opinion will need counseling indefinitely. The Panel accepts the evidence under EAA, Section 22(4) from this witness because a counselor was referred to within the documentation before the Ministry and the Panel places significant weight on the evidence from this witness because he is a prescribed professional that has counseled the Appellant for 2 years.

The second witness, the Appellant's friend, confirms she has witnessed the Appellant pain and fatigue and states he needs help with basic housekeeping and personal hygiene.

The Appellant recounted a typical day which involved taking at least 10 minutes to become mobile

(out of bed) because of weakness and numbness in his legs, using walls, dressers and railings for support around his home and his struggles to complete housekeeping chores, such as laundry, dishes and vacuuming while coping his pain, weakness and fatigue.

At the hearing, the Ministry reviewed the legislative criteria for PWD status and stated the information provided in the PWD application was not sufficient to meet the criteria because the information provided did not establish that the Appellant had a severe mental or physical impairment, that the impairment directly and significantly restricts his ability to perform daily living activities and that he requires significant help or supervision of another person to perform daily living activities.

**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 the physician 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**

**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 because the assessments from the physician and the assessor do not provide a clear picture of the Appellant's physical abilities and do not establish that the Appellant's physical skills are severely impaired at this time. The Ministry argues the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities at this time and that the Appellant does not require help to perform those activities.

The Appellant argues his symptoms are becoming progressively worse and his daily living activities are restricted and he needs help to perform these activities.

The Panel finds the Appellant does have a severe physical impairment because the Physician confirms the diagnosis as an "incurable, unbeatable degeneration of nerves" and the included medical reports state there is no treatment to reverse or slow the disease. Furthermore, although the physician's report shows relatively high functional skills, the assessor's report states the Appellant needs continuous assistance in all categories except standing. The assessor's evidence is collaborated by the Appellant's own description of his pain and struggles with muscle weakness, numbness and pain. The Panel finds the three reports read together confirm a severe physical

impairment.

The Panel finds the Appellant's physical impairment continuously, directly and significantly restricts his ability to perform daily living activities because the physician specifies 3 of 10 daily living activities as restricted continuously and the assessor specifies 19 of 34 as taking significantly longer, collaborated by the Appellant's description of his struggles with housekeeping, shopping and meal preparation and child care. The Panel also places weight on the oral evidence from the counselor who has regularly seen the Appellant for 2 years and confirms the ongoing and increasing struggles the Appellant has with daily living activities.

The Panel finds the Appellant requires help to perform daily living activities as a result of his restrictions because the assessor states the Appellant needs continual assistance with carrying purchases home, getting in and out of vehicles and using public transit. The assessor also notes that the Appellant needs help daily with meal planning, food preparation and cooking and that the Appellant would accept assistance if available with laundry and basic housekeeping. The Panel finds the assessor's notes are collaborated the counselor's oral evidence that the Appellant has been receiving counseling help for 2 years and will need ongoing support indefinitely.

The Panel finds the Appellant does meet all the statutory requirements for designation as a PWD.

The Panel finds the Ministry's decision was not a reasonable application of the applicable legislation and rescinds the decision. Therefore, the Ministry's decision is overturned in favour of the Appellant.