



## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the ministry's reconsideration decision dated January 20, 2010 which held that the appellant does not meet all the criteria required by the legislation to be designated a person with disabilities because a prescribed professional has not provided an opinion that his physical impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and as a result of those restrictions, he requires help to perform those activities.

## **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

The evidence before the ministry was the appellant's application for PWD designation including the Physician and Assessor Reports, both of which were completed by the appellant's physician of 8 years. The physician indicates that the appellant is greater than 18 years of age; that in his opinion, the appellant's physical impairment is likely to last for at least two years; and that the appellant has a severe physical impairment.

In the Physician Report, the physician notes that the appellant can walk 1 to 2 blocks, climb more than 5 stairs without assistance and carry 5 to 15 pounds. The physician also notes that the appellant is continuously restricted in the daily living activities (DLA) of personal care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning. The comments in this section of the application do not provide the detail necessary to confirm the extent, duration or frequency of the appellant's need for help. Rather, the physician explains that the appellant is too fatigued to have a normal social life or engage in physical activities; because of impairments, it takes him all day to complete basic tasks; and that he needs some help to maintain his living space.

In the assessor report, the physician contradicts his notes in the physician report by indicating that the appellant is independent walking indoors and standing and that he needs periodic assistance walking outdoors, climbing stairs, and carrying and holding. As assessor, the physician also contradicts his physician report noting that the appellant is independent in all personal DLA and shopping except he needs periodic help carrying purchases home and continuous assistance from another person going to and from stores. The contradiction carries over to the DLA of meals and transportation as he notes in the assessor report that the appellant is independent in all aspects of these DLA. He adds the final comment that the appellant is unable to cook from December 15, 2008 onward.

The appellant provided oral testimony that he was not as forthcoming to his physician about his need for help as he could have been. He said he spoke with the physician about his appeal and the physician said that if we needed more information to telephone him. The panel explained that that is not possible. We make our decision based on the documents submitted and any oral testimony in support.

The appellant said his sister does all his cleaning and laundry and his brother in law in whose home he lives does all the cooking and shopping. He said he can get to the store but would then have to sleep for the rest of the day to recover. It is difficult for him to admit that he is unable to perform DLA as prior to the virus which affected his heart he ran 5 miles every day.

In oral testimony, the ministry relied on the appellant's application for PWD and pointed out the contradictions where the physician indicates that the appellant requires continual help in many DLA then indicates in the Assessor Report that he is independent in almost all DLA. She pointed out that had the appellant sought the assistance of an advocate, the discrepancies in the physician's reports may have been cleared up.

In accordance with the Employment and Assistance Act, section 22 (4) (b), the panel admitted the appellant's oral testimony and that of the ministry as being in support of the information and records that were before the ministry at reconsideration.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision to deny the appellant persons with disabilities designation because a prescribed professional has not confirmed that the appellant's severe physical impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods and as a result of the restrictions he requires significant help or supervision from another person to perform DLA. The relevant legislation is found in the EAPWDA, section 2 and the EAPWDR, section 2 which read as follows:

### EAPWDA – Persons with Disabilities

#### 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 - Definitions for Act

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 argues that while the appellant meets the age and duration requirements and has a severe physical impairment, a prescribed professional has not established that his impairment directly and significantly restricts his ability to perform DLA either continuously, or periodically for extended periods and as a result of the restrictions he requires significant help or supervision to perform those activities.

The appellant argues that he did not fully explain his limitations to his physician or how much daily help he requires from his sister and his brother in law and that the physician will provide further information if telephoned.

The panel can only consider relevant written and oral testimony presented to them in the appeal hearing. The appellant provided oral testimony about the extent and frequency of the help he needs; however, the legislation requires that a prescribed professional provide his or her opinion on these matters. The opinion could be communicated in written form or orally if the prescribed professional was called as a witness in the hearing.

In reviewing the written record which was before the reconsideration officer, the panel noted inconsistencies within the Physician Report and between the Physician and Assessor Reports. In the Physician Report, the physician reports that the appellant requires continuous assistance in 8 of 10 DLA; however, his comments indicate that it takes the appellant longer to complete DLA and that he needs some help to maintain his living space. In the Assessor Report, the physician notes that the appellant needs continuous assistance with going to and from stores but is independent in all other DLA except laundry, basic housekeeping and carrying purchases home for which he needs periodic assistance. The physician does not provide information on the extent, duration or frequency of assistance required for those 3 DLA.

Based on all the written and oral testimony submitted, the panel finds that a prescribed professional has not confirmed that the appellant's impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods or that he needs the significant help or supervision of another person to perform DLA. The panel therefore finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.