



## **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's Reconsideration Decision dated 2010/Jan/22 which denied the appellant's request to be designated as a Person With Disabilities (PWD). The decision states that the appellant must meet five criteria as set out in the legislation. The ministry is not satisfied that the appellant meets all the criteria. Specifically, the ministry found that:

- the appellant is at least 18 years old
- a physician confirms that the appellant's impairment is likely to continue for at least two years

The ministry's decision also states that:

- the ministry is not satisfied that the appellant's that has a severe physical or mental impairment
- the ministry is not satisfied that the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods
- the appellant's prescribed professional does not confirm that, as a result of restrictions, he requires help to perform his daily living activities.

## **PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance For Persons With Disabilities Act (EAPWDA), Section 2 and 3  
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 at Reconsideration was:

- the appellant's Request for Reconsideration application dated 2009 Dec 29 including a December 18, 2009 letter signed by the appellant's physician, an extract from Hudson vs Employment and Assistance appeal Tribunal and a questionnaire completed by the appellant
- the appellant's Persons With Disabilities (PWD) application dated 2009 Aug 12

The ministry's Reconsideration Decision states that the appellant meets the age criterion, that the appellant's physician confirms that the condition is likely to last at least 2 years. The ministry is not satisfied that the appellant has a severe physical or mental impairment.

Specifically:

- diagnosis include moderately severe back strain, moderately severe osteoarthritis of neck, severe Obstructive Sleep Apnea (OSA) causes moderately severe fatigue + sleepiness in daytime + needs to nap
- the appellant is able to walk 4+ blocks, lift up to 15lb, remain seated up to 2 hours
- the physician states that the appellant needs job retraining
- the application does not support that the appellant's overall level of functioning is significantly restricted
- cognitive deficits are caused by insomnia due to OSA and mood disorder
- the physician reports moderate impacts to 12 of 14 aspects of cognitive emotional functioning and the conditions of BiPolar Disorder and Major depressive Disorder are yet to be determined

The decision also states that the ministry is not satisfied that the appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods. Specifically:

- the restriction/assistance required would only be for heavier items
- there is no explanation to describe the frequency or duration of severe back pain
- the appellant is able to independently perform half of her daily living activities
- the physician reports that the appellant is able to independently make appropriate social decisions and to secure assistance
- the physician does not speak to the degree and duration of support/supervision required
- the additional information submitted from the physician does not support a significant restriction

The decision also states 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 noting that the PWD application and Request for Reconsideration do not confirm that the appellant requires significant assistance from another person

The appellant's representative provided a written submission to the panel and discussed same. She advised the panel that the ministry's Reconsideration Decision was unreasonable

because:

- the appellant's physician reviewed a questionnaire completed by the appellant and confirmed his agreement with the answers provided by the appellant
- the questionnaire confirms the nature of the appellant's condition and his restrictions in performing his daily living activities
- the decision contravenes the Hudson decision as:
  - there is no basis for reading parts 2 and 3 of the PWD application discretely
  - the evidence of the physician and the assessor must be read in their entirety and in a broad way
  - it does not resolve ambiguity in favour of the appellant
  - that the appellant's self report should be given significant weight
  - the legislation must be interpreted with benevolent purpose

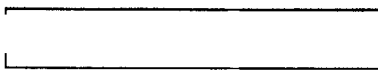
The submission also stated that the appellant's physician confirms 12 moderate to severe impacts of mood disorders and, when asked, the physician confirmed that the appellant meets the tests of severity through a need for assistive devices and significant support of others. The submission included a sheet with dictionary definitions of "severe". The ministry did not object to the admission of the sheet and the panel accepted it as evidence under Section 22(4) of the Employment and Assistance Act (EAA).

The ministry told the panel that part of the issue was that the ministry did not receive documentation of the appellant's medical condition. The diagnosis of the BiPolar Disorder and Major depressive Disorder are yet to be determined and are not mentioned in the assessor's report. The issue on back pain is what the appellant can do and the doctor has not confirmed enough information.

The panel concluded that the evidence is as follows:

- the appellant's physician has signed a letter prepared by the appellant's representative confirming that:
  - the appellant's impairment directly restricts his ability to perform daily living activities
  - the appellant has great difficulty with all daily living activities
  - the restrictions to personal self-care, use of transportation, management of finances and transportation are continuous
  - the appellant needs periodic assistance from another person for walking outdoors, climbing stairs, standing, lifting, carrying and holding
  - the physician has reviewed and confirmed his agreement with the appellant's answers to the questionnaire
- the questionnaire indicates that the appellant's disability makes it difficult for him to do numerous activities including:
  - personal care (showering, bathing, washing, having energy to bath)
  - preparing meals (chopping, peeling food, lifting and opening)
  - taking medications (remembering to take and to fill prescriptions)
  - housework (washing, cleaning, making beds, putting dishes away, vacuuming, sweeping, dusting, carrying and doing laundry, cleaning windows, having motivation to do so)
  - shopping (walking around stores, carrying groceries, being able to do so without being anxious or scared)

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- moving around inside the house (walking from room to room, stairs, getting in and out of chairs, bending, kneeling)
  - moving around outside the home (walking very far, stairs, going out without being scared)
  - using transportation (standing or sitting on the bus, using without being scared)
  - managing money and paying bills (remembering to pay, budgeting)
  - eating (throwing up, eating regularly, eating healthy food)
  - communication (hearing and concentrating)
  - mental and emotional skills (anxiety, depression, stress, confusion, planning, remembering, etc)
  - social skills (socializing, interacting with others, maintaining relationships, dealing with the unexpected)
  - the assessor's report indicates that:
    - the appellant's mental impairment has a major impact on his bodily functions, consciousness, emotion, attention/concentration, memory, motivation, and motor activity
    - the appellant's mental impairment has a moderate impact on his impulse control, insight and judgement, executive functions
    - the appellant needs continuous assistance from another person for lifting, carrying and holding, transfers in/out of bed and chair, paying rent and bills, filling prescriptions
    - the appellant needs periodic assistance from another person for dressing, laundry, basic housekeeping, going to/from store, reading prices and labels, making appropriate choices, paying for purchases, budgeting, getting in and out of a vehicle
    - the appellant needs periodic supervision from another person to develop and maintain relationships, to interact appropriately with others and to deal with unexpected demands



## **PART F – REASONS FOR PANEL DECISION**

The issue in this case is the reasonableness of the Ministry's decision to deny the appellant's request for PWD designation.

The relevant legislation is the EAPWDA, Section 2 and EAPWDR Section 2. EAPWDA, Section 2 states that the minister may designate a person who has reached 18 years of age PWD if 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 continuously, or periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

Section 2 (3) states that

- (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.

EAPWDR Section 2 states:

- (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 ministry confirms that the appellant meets the age criterion and that the impairment is likely to last at least 2 years but the ministry is not satisfied that the appellant has a severe physical or mental impairment. The ministry's position is also that it is not satisfied that the appellant's daily living activities are directly and significantly restricted either continuously or for extended periods and 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 appellant's position is that he has provided evidence that all the legislative requirements of a person with disabilities have been met.

The panel reviewed the medical evidence including the assessment and the questionnaire. The panel noted the evidence in the doctor's letter, the questionnaire and the assessor's report of the numerous activities that are difficult for the appellant to perform. The panel thus concluded that the appellant suffers from severe physical and mental impairments. The panel also noted that the appellant's physician confirmed that the appellant's impairment directly restricts his ability to perform daily living activities continuously. These activities include preparing meals, managing finances, shopping, using transportation, housework, moving indoors and outdoors, personal hygiene and managing medication as prescribed in EAPWDR Section 2(1)(a). These activities also include making decisions about personal activities, care or finances and interacting with others as prescribed in EAPWDR Section 2(1)(b). The panel, therefore, concludes that the provisions of EAPWDA, Section 2(b)(i) have been met. The panel also noted that the assessor's report confirms that the appellant needs continuous or periodic assistance from another person for numerous activities and that the appellant needs periodic supervision for social functioning. As such the panel concludes that the provisions of EAPWDA, Section 2(b)(ii) and Section 3(a) and (b)(ii) have been met. Accordingly, the panel finds that the ministry's decision is not reasonably supported by the evidence and the panel rescinds the ministry's decision.