

PART C – Decision under Appeal

In the Reconsideration Decision of March 29, 2011, the ministry denied the appellant's request for Persons with Disabilities designation. With reference to Section 2(2) and (3) of the Employment and Assistance for Persons with Disabilities (EAPWD) Act and Section 2 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, the ministry determined that the appellant fails to meet three of the five criteria that must be met in order for the ministry to grant this designation. Specifically, the ministry finds that:

1. the appellant does not have a severe physical or mental impairment
2. the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict his ability to perform daily living activities and
3. the appellant does not require significant help or supervision of another person to perform daily living activities restricted by his impairment

PART D – Relevant Legislation

EAPWD Act, Section 2(2) and 2(3)
EAPWD Regulation, Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included the following:

1. Request for Reconsideration (RR), dated March 8, 2011, includes a written submission by the appellant.
2. The appellant's original PWD Application, dated December 9, 2010, including a self-report.
3. Physician Report (PR), dated December 7, 2010.
4. Assessor Report (AR), dated December 8, 2010.

In the RR, the appellant makes the following points:

- due to his physical impairment, he is no longer able to continue in his line of work,
- he is taking upgrading to make himself more employable and often needs to stand during lessons because of pain,
- he needs proper chiropractic treatment and cannot afford it hence he needs PWD status to help him pay for treatment.
- he just wants to get to the point where he can work again and provide a good home for his daughter.

In the PR, the appellant, the appellant's physician diagnoses that the appellant suffers from musculoskeletal back and neck pain and associated headaches related to neck pain. The appellant's physician comments that the appellant suffers from chronic mechanical neck and back pain which results in headaches severe enough to limit activity. The physician notes that the appellant has not been prescribed any medication that interferes with his ability to perform daily living activities (dla's) and that he does not require any prostheses or aids for his impairment. The physician confirms that the appellant's impairment is likely to last for 2 or more years and that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 15 to 35 pounds and can remain seated for 2 to 3 hours. The physician further notes that the appellant has no significant deficits with his cognitive and emotional function. The physician confirms that the appellant's impairment directly restricts his ability to perform dla's noting that he requires continuous assistance with basic housework and periodic assistance from his daughter to accomplish daily shopping but requires no assistance with personal self care, meal preparation, management of medications, mobility inside the home, use of transportation and management of finances. The appellant has been a patient of the physician for 12 years and has been to see the physician 2 – 10 times in the past 12 months.

In the AR, the assessor writes that the appellant's pain from his disability restricts him from completing job tasks and activities of daily living. The assessor notes that the appellant has good ability to communicate and "takes significantly longer" in climbing stairs, standing, lifting and carrying and holding. The assessor reports that the appellant is independent in grooming, bathing, feeding self, regulating diet, laundry, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, safe storage of food, filling prescriptions, taking prescriptions as directed and safely storing prescriptions. The assessor further reports that the appellant takes significantly longer in dressing, toileting, transfers (in and out of bed), transfers (on and off chair), going to and from stores and carrying purchases home. The assessor notes that the appellant requires periodic assistance with basic housework, and banking, budgeting and paying bills (due to financial difficulties). The assessor does not identify any of the appellant's dla's as requiring continuous support. The assessor concludes by saying that the appellant requires financial support

while retraining as well as requiring financial support for appropriate chiropractic care. The assessor is the appellant's chiropractor and has seen the appellant 11 or more times in the past year.

The Panel makes the following findings of fact:

The appellant is diagnosed with musculoskeletal back and neck pain and associated headaches related to neck pain and that this disability will last for at least 2 years. The appellant is no longer able to continue in his line of work and is experiencing financial difficulties in retraining and securing treatment for his condition.

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 Persons with Disabilities designation with reference to EAPWD Act, Section 2(2) and 2(3) and EAPWD Regulation, Section 2, determining that the appellant fails to meet three of the five criteria that must be met for the ministry to grant PWD designation. Specifically, the ministry determined that:

1. the appellant does not have a severe physical or mental impairment
2. the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict his ability to perform daily living activities and
3. the appellant does not require significant help or supervision of another person to perform daily living activities restricted by his impairment

The EAPWD Act, Section 2 (2) sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the person's ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help or an assistive device to perform those activities.

EAPWD Act, Section 2 (3)

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 EAPWDR, Section 2, defines "daily living activities" and "prescribed professional" as follows:

Daily living activities

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.

The Ministry argues:

- The information provided does not establish a severe physical or mental impairment. In the PR, the physician indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ stairs unaided, can lift items weighing between 15 – 35 pounds, and can remain seated for 2 – 3 hours. In the AR, the assessor indicates that the appellant takes significantly longer when climbing stairs, standing, lifting and carrying/holding but has not described how much longer than typical these activities take.

- The information provided does not establish that daily living activities are significantly restricted. In the PR, the physician indicates that basic housework is continuously restricted. While daily shopping is periodically restricted and help from the appellant's daughter is required, the type of assistance and whether the appellant requires this assistance periodically for extended periods has not been

described. The physician indicates that personal self care, meal preparation, management of medications, mobility inside and outside the home use of transportation and management of finances are not restricted. In the AR, the assessor indicates that the appellant requires periodic assistance with basic housekeeping but has not described whether the appellant requires this assistance periodically for extended periods of time. The assessor indicates that the appellant requires periodic assistance with banking, budgeting and paying rent and bills however the periodic assistance with these activities does not appear to be due to a severe mental or physical impairment, rather due to financial limitations. The assessor indicates that the appellant takes significantly longer with some aspects of personal care and some aspects of shopping but has not described how much longer than typical these activities take. The assessor indicates that the appellant is independent in many daily living activities with some areas taking longer than typical. The information provided does not establish significant restrictions to the appellant's daily living activities.

- As it has not been established that daily living activities are significantly restricted therefore, it cannot be determined that significant help is required from other persons.

The appellant argues:

- He can no longer continue in his current line of work.
- He has been accepted for retraining in September and requires financial support.
- He requires chiropractic care for his condition but cannot afford it.
- He requires financial support through PWD designation only for about a 2 year period - until his retraining is completed and his level of disability is improved through chiropractic care.
- He presently needs to rely on other people way too much.
- He wants to be able to provide a good home for his daughter and be able to be actively involved with her.

The Panel makes the following observations:

In the PR, the physician notes that the appellant does not require any prostheses or aids for his impairment. The physician confirms that the appellant's impairment is likely to last for 2 or more years and that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 15 to 35 pounds and can remain seated for 2 to 3 hours. The physician further notes that the appellant has no significant deficits with his cognitive and emotional function. In the AR, the assessor notes that the appellant has good ability to communicate and "takes significantly longer" in climbing stairs, standing, lifting and carrying and holding.

The Panel finds that the ministry was reasonable in its decision that the information provided does not establish that the appellant has a severe physical or mental impairment.

In the PR, the physician notes that the appellant has not been prescribed any medication that interferes with his ability to perform daily living activities. The physician further notes that the

appellant requires continuous assistance with basic housework and periodic assistance from his daughter to accomplish daily shopping but requires no assistance with personal self care, meal preparation, management of medications, mobility inside the home, use of transportation and management of finances. In the AR, the assessor reports that the appellant is independent in grooming, bathing, feeding self, regulating diet, laundry, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, safe storage of food, filling prescriptions, taking prescriptions as directed and safely storing prescriptions. The assessor further reports that the appellant takes significantly longer in dressing, toileting, transfers (in and out of bed), transfers (on and off chair), going to and from stores and carrying purchases home. The assessor notes that the appellant requires periodic assistance with basic housework, and banking, budgeting and paying bills (due to financial difficulties). The assessor does not identify any of the appellant's dla's as requiring continuous support.

Based on the evidence that the appellant is independent in almost all of his dla's, the Panel finds that the ministry was reasonable in its decision to conclude that the information provided by the appellant's physician and chiropractor does not indicate that the appellant's impairment directly and significantly restricts his ability to perform daily living activities, either continuously or periodically for extended periods.

The Panel finds that because it has not been established that the appellant's daily living activities are directly and significantly restricted due to his impairment (above), the ministry was reasonable in its decision that it cannot be determined that the appellant requires significant help from another person in order to perform those activities.

In summary the Panel finds that the ministry was reasonable in its decision to deny the appellant PWD designation finding that he fails to meet three of the five criteria that must be met for the ministry to grant PWD designation. Specifically the ministry determined that:

1. the appellant does not have a severe physical or mental impairment
2. the appellant's impairment does not, in the opinion of a prescribe professional, directly and significantly restrict his ability to perform daily living activities and
3. the appellant does not require significant help or supervision of another person to perform daily living activities restricted by his impairment

The Panel therefore finds that the ministry's reconsideration decision was reasonably supported by the evidence and that it was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the decision of the ministry.