

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated February 11, 2011, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD). The decision stated that the Appellant did not meet 3 of the 5 statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a PWD. The ministry found that the Appellant met the age requirement and that his impairment is likely to continue for at least 2 years. The ministry determined that:

- the information before the Ministry at reconsideration did not establish that the Appellant has a severe physical and/or mental impairment;
- the information before the Ministry at reconsideration did not establish that the Appellant's impairment in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities (DLAs) either continuously or periodically for extended periods; and,
- The information did not establish that to perform directly and significantly restricted DLA's the Appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

PART D – Relevant Legislation

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

Information before the Ministry at Reconsideration included:

- 14 pages of medical reports dated 2009 and 2010, translated, stamped as received by the Ministry December 15, 2010, which report results of MRI examinations of the Appellant's spine, indicating that further assessment is required. The recommendations include avoiding physical effort, cold, humidity, walking and upright position for long periods, non-steroidal anti-inflammatory treatment, physiokinetic treatment, orthoses, braces and periodic neurological examination.
- A copy of a physician's report dated August 20, 2008, stating that the physician found no neurological abnormality and no indication to have an MRI performed.
- A copy of a Consultation Report from a local hospital dated February 5, 2006, stating findings that there are 5 lumbar type vertebrae in normal alignment, there is a little narrowing of the L 1-2 and it is hypointense on T2 weighted sequences. The remainder of the discs are normal in height and signal. There is a little loss of height of L3 with the appearance most consistent with a mild compression fracture involving the superior vertebral end plate. The canal diameter is large throughout and there is no abnormality of the conus. There is no disc protrusion or bulging. The conclusion is probable remote mild compression fracture of L3 vertebra. No disc protrusion or nerve root compression was demonstrated.
- The Appellant's Persons with Disabilities Designation Application, stamped as received by the Ministry September 9, 2010.
- The Ministry's Persons with Disabilities Decision Summary, dated November 19, 2010.
- A copy of the Ministry's letter to the Appellant advising him of their decision, dated November 19, 2010.
- The Appellant's Request for Reconsideration, dated December 15, 2010.

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In the PWD application, the Appellant's physician reported that he is diagnosed with compression fracture L3 vertebra, C6-7 herniation and spinal degeneration lumbar, with the comment that pain has caused significant anxiety and depression. The physician reported that the Appellant can walk 4+ blocks slowly, climb 5+ steps slowly, lift 5 to 15 pounds and can sit less than one hour. The physician reported a significant deficit with cognitive and emotional function with emotional disturbance. With respect to mobility and physical activity, the physician, acting as assessor, reported that the Appellant requires periodic assistance with lifting and carrying and holding. With respect to cognitive and emotional functioning, the physician reported that the Appellant has a major impact with emotion, moderate impacts with consciousness, attention/concentration, executive, memory and motivation and minimal impacts with bodily function, insight and judgement and motor activity. All aspects of daily living activities were reported as being performed independently. With respect to social functioning, the physician reported that the Appellant requires periodic support with interacting appropriately with others, dealing appropriately with unexpected demands and the ability to secure assistance from others. The physician reported very disrupted functioning with his immediate and extended social networks. The physician reported that the Appellant receives assistance from family and friends. There is no report of a requirement for assistive devices.

With respect to the Appellant's physical impairment the Panel's findings of fact are:

- The Appellant is diagnosed with compression fracture L3 vertebra, C6-7 herniation and spinal degeneration lumbar;
- The physician reported that the Appellant can walk 4+ blocks slowly, climb 5+ steps slowly, lift 5 to 15 pounds and can sit less than one hour;
- With respect to mobility and physical activity, the physician, acting as assessor, reported that the Appellant requires periodic assistance with lifting and carrying and holding.

With respect to the Appellant's mental impairment the Panel's findings of fact are:

- The physician reported no diagnosis of a mental health condition;
- The physician reported a significant deficit with cognitive and emotional function, emotional disturbance;
- With respect to cognitive and emotional functioning, the physician reported that the Appellant has a major impact with emotion, moderate impacts with consciousness, attention/concentration, executive, memory and motivation and minimal impacts with bodily function, insight and judgement and motor activity.

With respect to the Appellant's DLA restrictions, the Panel's findings of fact are:

- All aspects of daily living activities are reported as independent;
- With respect to social functioning, the physician reported that the Appellant requires periodic support with interacting appropriately with others, dealing appropriately with unexpected demands and the ability to secure assistance from others.

With respect to the Appellant's requirement for help to perform DLA's, the panel's findings of fact are:

- The physician reported that the Appellant receives assistance from family and friends;
- The physician did not report that any assistive device is required.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a Person with Disabilities (PWD). The ministry determined that:

- the information before the Ministry at reconsideration did not establish that the Appellant has a severe physical and/or mental impairment;
- the information before the Ministry at reconsideration did not establish that the Appellant's impairment in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities (DLAs) either continuously or periodically for extended periods; and,
- The information did not establish that to perform directly and significantly restricted DLA's the Appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

EAPWDA:

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:

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 Appellant's position is that he meets the requirements for designation as a PWD. The Appellant, in his Notice of Appeal, stated that the gravity of his injuries put his life in immediate danger. In his Request for Reconsideration, the Appellant alleges that his physician deliberately concealed vital information about his health. He states that he has had several heart attacks which his physician has refused to accept and document. The Appellant wrote that he is able to do his daily activities for now, but that his condition is deteriorating. The Appellant wrote that his disk degeneration is continuous and is a permanent degenerative disease that is severe and life threatening.

The Ministry's position is, as stated in the Reconsideration Decision, that the Appellant's functional skills enable him to carry out physical activities slowly and that he requires assistance lifting, carrying and holding, but there is no explanation of the frequency and duration of the assistance required, and all aspects of DLA's are reported to be performed independently. The Ministry found that it is not possible to conclude that the Appellant has a severe physical impairment. With respect to a mental impairment, the Ministry stated that although significant deficits with cognitive and emotional function were reported, there is no diagnosis of a mental health condition; therefore it is unable to establish that the Appellant has a severe mental impairment. With respect to DLA restrictions, the Ministry stated that the Appellant's physician reported that he is able to carry out all DLA's listed, therefore it cannot be established that the Appellant's impairment significantly restricts his ability to perform daily living activities as set out in legislation. The Ministry found that as it has not been established that the Appellant's DLA's are significantly restricted, it cannot be determined that significant help is required to perform them. The Ministry argued that the information from physicians in another country

which was provided by the Appellant cannot be considered because the information considered must be from prescribed professionals set out in the legislation.

With respect to a severe physical impairment, the Panel notes that the Appellant's physician has diagnosed him with compression fracture L3 vertebra, C6-7 herniation and spinal degeneration lumbar. The physician reported that the Appellant can walk 4+ blocks slowly, climb 5+ steps slowly, lift 5 to 15 pounds and can sit less than one hour. The physician reported that the Appellant requires periodic assistance with lifting and carrying and holding, and that he performs all aspects of DLA's independently. The Panel considered the additional information provided by the Appellant, and considering all of the information provided, the Panel finds that the Ministry's determination that the Appellant does not have a severe physical impairment was reasonable.

With respect to a severe mental impairment, the Panel notes that the Appellant's physician has indicated a significant deficit with cognitive and emotional functioning, specifically emotional disturbance, and reported that the Appellant has a major impact with emotion, moderate impacts with consciousness, attention/concentration, executive, memory and motivation and minimal impacts with bodily function, insight and judgement and motor activity. However, the physician did not report any diagnosis of a mental health condition. The Panel finds that the Ministry's determination that the Appellant does not have a severe mental impairment was reasonable.

With respect to the Appellant's ability to perform daily living activities, the Appellant's physician reported that he is independent in performing all DLA's. The physician reported that with respect to social functioning, the Appellant requires periodic support/supervision with interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others, however there is no explanation of the degree and duration of the support/supervision required. The Panel finds that the Ministry's determination that the Appellant's impairment does not significantly restrict his ability to perform DLA's either continuously or periodically for extended periods was reasonable.

With respect to the Appellant's requirement for help to perform DLA's, the Appellant's physician reported that he receives assistance from family and friends with no details. There is no notation concerning any assistive device or assistance animal. The Panel finds that the Ministry's determination that the information does not establish that the Appellant requires significant help to perform DLA's was reasonable.

The Panel finds that the Ministry's decision to deny the Appellant's application for PWD designation was reasonably supported by the evidence. The Panel confirms the Ministry's decision.