

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration decision dated August 22, 2011 which denies the appellant's request for Persons with Disabilities (PWD) designation. The ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria under section 2 of the EAPWD Act and Regulation:

- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires help or supervision of another person to perform the daily living activities restricted by the impairment.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
EAPWD Regulation, section 2

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the appellant's PWD application which included a physician's report dated March 10, 2011, and an assessor's report dated March 19, 2011.

In the physician's report, the physician indicates that she has known the appellant since October 2008 and in that time has seen the appellant 2 – 10 times. She diagnoses the appellant with chronic venous insufficiency, chronic prostatitis, generalized anxiety disorder, allergy to dust mites, and gastritis.

In her additional comments, the physician notes, among other things, that the appellant continues to have severe discomfort due to prostatitis, and that he has overall pains and specifically leg pain due to venous insufficiency (he wears pressure stockings). She says he has severe anxiety, is inappropriately angry and anxious at times with others and that this affects his social life as well as employment.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 1-2 blocks unaided, can climb 2-5 steps unaided, can lift 5 – 15 lbs, and can remain seated for 1 – 2 hours.

The physician indicates that the appellant experiences significant deficits with his cognitive and emotional function, and specifically with executive function, language, memory, emotional disturbance, and attention or sustained concentration. She notes that the appellant has inappropriate bursts of anger, fear, and anxiety, and is very labile.

Under Part E, the physician indicated that the appellant faces no restrictions with the following identified activities of daily living: personal self care, meal preparation, management of medications, basic housework, mobility inside the home, and management of finances. The physician further indicates that the appellant faces periodic restrictions with daily shopping, mobility inside and outside of the home, use of transportation, and management of finances.

The physician adds that the appellant limits his activities to a minimum and requires rest most of the time. She says he is currently helped by a few friends, and that no further professional help is required.

The physician concludes by indicating that the appellant is often in a disturbed mental state when seen by the physician, that he is overly anxious about every symptom that he may have, and that he is anxious about his well being all of the time.

The assessor's report is completed by the same physician. The assessor indicates at Part B (paragraph 3) that the appellant is independent with walking indoors, and that he requires periodic assistance for walking indoors, climbing stairs, standing, lifting, carrying and holding. The assessor adds that the appellant's friends help occasionally.

At Part B, the assessor indicates that the appellant experiences no impact of his cognitive and emotional functioning with respect to consciousness, motor activity, and psychotic symptoms. She further indicates that the appellant experiences minimal impact with his bodily functions, impulse control, insight and judgment, memory, other neuropsychological problems, and other emotional or mental problems. She notes also that the appellant experiences moderate impact with this attention/concentration, executive function, and motivation, and that there is a major impact with respect to his emotion and language. In her comments, the assessor further comments that the appellant is angry at every situation that presents itself, and that he says he is depressed and that is why he gets upset easily.

Under Part C, the assessor indicates that the appellant is independent in all aspects of personal care, all aspects of basic housekeeping, reading prices and labels, making appropriate shopping choices and paying for purchases, all aspects of meals, paying rent/bills, and medications. With respect to shopping, the assessor indicates that the appellant requires periodic assistance with going to/from stores and carrying purchases home. She also notes that the appellant requires periodic assistance with all aspects of transportation.

With respect to the daily living aspects of social functioning, the assessor indicates that the appellant requires periodic support with all identified aspects except that he is able to independently secure assistance from others.

The assessor notes that the appellant functions at a marginal level with his immediate and extended social networks.

Finally, the assessor concludes by indicating that the appellant has a friend who helps him when he needs to go shopping or occasionally when he needs a ride, and that the appellant requires a cane, pressure stockings, and custom orthotics.

In his request for reconsideration, the appellant self reports that he is not sleeping well due to depression and stress, that he finds it very difficult to shower and shave and care for himself and his personal needs, that he has difficulty with meals and feeding himself, and also with his housekeeping and banking.

In his notice of appeal, the appellant adds that that he has depression, neck pain and feet pain. He says that he cannot stand for more than 10 minutes because of his pain. He also says that he has a prostate problem, allergies from smoke and dust, a stomach problem and sleep deprivation. He says he cannot work because of these impairments.

The panel finds that the new information by the appellant is in support of the original information and records that were before the ministry at the time of reconsideration, as the information confirms and/or is in support of the diagnoses and related impairments already referred to by the appellant and the prescribed professional at reconsideration. As such, the panel admits the new information as evidence before this appeal pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible for a PWD designation under section 2 of the EAPWD Act and Regulation because the appellant did not meet the following criteria:

- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires help or supervision of another person to perform the daily living activities restricted by the impairment.

Section 2(2) of the EAPWD Act provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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.

Section 2 of the Regulation states as follows:

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 says that while the appellant has met the age and duration requirement, and while the information provided by the physician and assessor indicates that the appellant's impairments are severe, the medical evidence does not confirm that, in the opinion of a prescribed professional, the appellant is significantly restricted in his daily living activities to the extent that his impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods. Further, the evidence does not confirm that the appellant requires help because of those restrictions. As such, the ministry says that they were unable to assign PWD status on the basis that the appellant did not meet the legislative criteria as set out in section 2 of the Regulation.

The appellant contends that he is significantly restricted in his ability to perform daily living activities, and that he requires help because of his restrictions.

Turning to the question of whether the appellant's impairments, in the opinion of a prescribed professional, directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods, the panel finds that the ministry reasonably concluded that this criterion has not been met.

In the physician's report, the physician indicates that the appellant can walk 1-2 blocks unaided, can climb 2-5 steps unaided, can lift 5 – 15 lbs, and can remain seated for 1 – 2 hours. The physician then goes on (under Part E) to indicate that the appellant faces no restrictions with the following identified activities of daily living: personal self care, meal preparation, management of medications, basic housework, mobility inside the home, and management of finances. She adds that the appellant faces periodic restrictions only with daily shopping, mobility inside and outside of the home, use of transportation, and management of finances.

The physician adds that although the appellant experiences periodic restrictions with certain activities, he does receive occasional help from a few friends, and that no further professional help is required.

The physician concludes by indicating that the appellant is often in a disturbed mental state when seen by the physician, that he is overly anxious about every symptom that he may have, and that he is anxious about his well being all of the time.

In the assessor's report under Part C, the same physician indicates that the appellant is independent with almost every identified aspect (23 out of 28) of daily living activities. She notes that while the appellant requires assistance with going to/from stores, carrying purchases home, and all aspects of transportation, that assistance is periodic only.

In the absence of further evidence from the prescribed professional, the panel finds that the ministry's decision is reasonable in that it concluded that the appellant's impairments do not directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods.

With respect to whether or not the appellant requires significant help or supervision to perform daily living activities that are significantly restricted by his impairment, again the physician has said very little about this. What the physician does say is that the appellant receives help from a few friends, but no further professional help is required.

The physician/assessor has not elaborated on the actual activities that require help, or on the duration or extent of the help that the appellant requires.

Pursuant to the legislation, the need for help must be for activities of daily living that are determined to be directly and significantly restricted. In the absence of information confirming this criterion, the panel concludes that the ministry reasonably determined that the appellant does not require help or supervision of others to perform daily living activities that are directly and significantly restricted.

In summary, the panel concludes that the ministry reasonably determined that the appellant has not met all of the legislated criteria in order to be eligible for PWD status, and that the ministry's decision was reasonably supported by the evidence. As such, the panel confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.