

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 7, 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 appellant does not have a severe mental or physical impairment;
- 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 an undated physician's report and an assessor's report dated July 13, 2011. Both reports are completed by the same physician.

The physician indicates that he has known the appellant since 1999 and in that time has seen the appellant 11 or more times. In the physician's report, he diagnoses the appellant with interstitial lung disease, osteoarthritis, and bronchiectasis. He comments that dyspnea on exertion is the main complaint and main cause of impairment of function.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, can lift 15 – 35 lbs and can remain seated 2 - 3 hours. The physician further indicates that the appellant experiences no deficits with his cognitive and emotional function.

The physician did not complete sections E through H of the physician's report.

In the assessor's report, the same physician indicates at Part B that the appellant experiences dyspnea on exertion as his main symptom which prevents him from working. He also notes "can still manage basic ADL's". The assessor goes on to indicate that the appellant has a good ability to communicate, and that he is independent with all identified aspects of mobility and physical activity.

The assessor did not complete paragraph 4 of Part B which deals with the level of impact of any cognitive and emotional functioning.

Under Part C, the assessor indicates that the appellant is independent in all identified areas of daily living which include personal care, basic housekeeping, shopping, meals, paying rent/bills, medications, transportation and social functioning.

The assessor indicates that the appellant functions at a good level with both his immediate and extended social networks.

At Part D, the assessor indicates that the appellant lives with a friend who does some shopping and cooking.

In his application for reconsideration, the appellant self reports that since he applied for PWD, his condition has gotten worse. He explains that he has 1 – 3 episodes a week where he cannot catch his breath and when that happens he has to stay in bed. He explains how he has had to increase his puffer use and that his left leg goes numb every day disabling him from walking. When that happens he requires pain killers. He confirms that he cannot return to work and says that the damage to his lungs is irreversible.

In his notice of appeal, the appellant again submits that his condition has gotten much worse.

At the oral hearing, the appellant made further submissions and stated:

- His condition is getting worse every day;
- His doctor told him he will never work again and was the individual who first suggested that the appellant apply for disability status;
- He fell down in the mall the other day because his leg went numb;
- He takes painkillers and sleeping pills every day;
- He possibly requires a lung biopsy and has scar tissue on his lungs which impedes his breathing. If his condition gets worse, the only possible option is a lung transplant and he would be required to quit smoking for that. He is trying to quit but it is very difficult.
- The ministry keeps saying that he is "not disabled enough" and he does not understand why;
- He was present with his physician when the forms were filled out;
- At the time that the forms were filled out, he was independent with his daily living activities and therefore agrees with the physician's assessment of him, at that time; and
- Although his condition is much worse, he has not considered have his physician provide an updated form or letter to support his worsening 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 appellant does not have a severe mental or physical impairment;
- 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 the information provided by the physician and assessor indicates that the appellant's physical or mental impairments are not severe. The ministry based its decision on the physician's original findings that the appellant is able to walk 4+ blocks unaided, can climb 5+ stairs unaided, can lift 15 – 35 lbs, and can remain seated 2 – 3 hours. The ministry also relies on the assessor's report wherein the same physician notes that the appellant can manage all of the identified daily living activities independently, and the physician's evidence that the appellant experiences no deficits with his cognitive and emotional function.

For the same reasons, the ministry finds further that (1) the appellant is not 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, and (2) that the appellant does not require the significant help or assistance of another person or animal to perform

the directly and significantly restricted activities of daily living. 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 his impairments are severe, and that his condition has gotten much worse since he first applied for PWD. He says that he can barely walk now and that he is having significant breathing problems. He does not understand how the ministry is not recognizing the severity of his disability.

The panel has considered the appellant's evidence regarding the worsening of his impairments. The panel has also considered that, although the appellant contends that his condition has become significantly worse since reconsideration, he has not provided any supporting information from his physician to support his position. Such information would have been helpful particularly as the evidence of the appellant regarding his worsening health conflicts with all of the information from the physician/assessor which suggests that the physical impairments are limited and still enable the appellant to be independent in most aspects of his daily living.

For instance, with respect to whether the appellant has severe physical impairments, the panel finds that the evidence of the physician is that although the appellant suffers from impairments to his physical health, the impairments do not create any restrictions with respect to the appellant's physical ability to perform daily living activities. For instance, the panel has considered the physician's evidence that the appellant is able to walk 4+ blocks unaided, can climb 5+ stairs unaided, can lift 15 – 35 lbs, and can remain seated 2 – 3 hours. The panel has also considered the assessor's report wherein the same physician notes that the appellant can manage all of the identified daily living activities independently. In the absence of further supporting information suggesting severity of his physical impairments, the panel finds that the ministry reasonably concluded that the appellant's physical impairments are not severe.

With respect to whether the appellant suffers from severe mental impairments, again the panel has considered the evidence of appellant, in conjunction with the evidence of the physician/assessor which says nothing of the appellant suffering from any mental health conditions or any cognitive or emotional deficits. In the absence of further supporting evidence, the panel finds that the ministry reasonably concluded that the appellant's mental impairments are not severe.

Turning to the question of whether the appellant's impairments directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods, the panel finds also that the ministry reasonably concluded that this criterion has not been met. In making this finding, the panel again considered the physician's evidence that the appellant is able to walk 4+ blocks unaided, can climb 5+ stairs unaided, can lift 15 – 35 lbs, and can remain seated 2 – 3 hours. The panel also considered the assessor's report wherein the same physician notes that the appellant can manage all of the identified daily living activities independently. Further, the panel notes the assessor's comments that the appellant "... can still manage basic ADL'S".

In the absence of further information from the prescribed professional suggesting direct and significant restrictions, 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, the physician has said very little about this as well other than to note that the appellant lives with a friend who does some shopping and cooking. The physician has not identified the duration or extent of the help that the appellant requires. Further, the panel points out that, pursuant to the legislation, the need for help must be for activities of daily living that are determined to be directly and significantly restricted. As none of the appellant's activities of daily living have been identified by the physician as being directly and significantly restricted, 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.