

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 2, 2011 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated June 22, 2010, physician report dated August 25, 2010, and assessor report dated August 25, 2010;
- 2) Letter from the ministry to the appellant denying his request for persons with disabilities designation and enclosing the decision summary, dated November 2, 2010; and,
- 3) Letter from the appellant's advocate 'To Whom It May Concern' dated December 8, 2010 requesting an extension of time for his appeal to allow the appellant to obtain more information from his physician located in another province; and,

At the hearing, the appellant's advocate explained that a request had been made for further information from the appellant's previous physician in another province, but no response was received and, therefore, there was no additional documentary evidence to be submitted. The appellant explained that he was born with only 10% of normal vision, he is legally blind, has worn eye glasses all his life, and has been receiving a CPP disability benefit. The appellant states that his physician has told him before that he would be lucky to see at all by the time he was 50 years of age, that he is at a high risk of suffering a detached retina, which would involve surgery to repair. As a result of his condition, the appellant explained that there are many things he cannot do, such as drive. There are other activities that he can perform but only with great difficulty, such as shopping, since he has to get very close to any print in order to be able to read it and he often has to lean down to get close to price signs. The appellant explained that he also suffers from nystagmus, or involuntary movement of the eyes, which makes it difficult to focus on an object and it will take him much longer to read any print, such as labels or prices. The appellant states that it will take him 2 to 3 days to read a newspaper, and an aid like a magnifying glass does not help with his condition. The appellant states that he does not use computers because it takes too long for him to see what is on the screen and changing the font size does not make a difference to his inability to focus his eyes. The appellant states that when he tries to shave, he cannot see the hair very well and he has to feel the hair with his hands. With taking the bus, the appellant explained that he often cannot read the number on the bus or on the signs and sometimes misses the bus. Also, the appellant explains that his condition causes him to be very sensitive to sunlight and he must keep his head down or his eyes covered when outside.

The appellant stated that he and his wife recently moved to British Columbia from another province and he is starting to find some landmarks in the city which assists him with taking the bus and he tries to stay in one area for most of the time he is out in the community. In response to a question, the appellant states that he does not use a cane when he is outdoors as he would prefer to rely on help from others. The appellant also explained that he has suffered with his physical impairments his entire life and that he does not know the physician who prepared the reports for the PWD application very well and was unable to get further information from his previous physician. For chores like sweeping or cleaning the floor, the appellant states that he has to go by the pattern in the floor to cover an area because he cannot see any dirt on the floor and it takes him a long time. The appellant states that, for the laundry, he can sort by colour, but his wife usually does the laundry because he cannot read the dials for the appropriate setting. For meal preparation, the appellant states that he has to be careful of his fingers when cutting and he cannot see if food is sufficiently cooked, so his wife has to check. When washing the dishes, the appellant states that he has to feel with his hands whether he has removed the food and gotten them clean. The appellant explained that in 1996 a van ran into him and he suffered a bruised kidney, a crack in his tailbone and knee, and that he was unable to work and he began to experience depression. The appellant states that he had seen a psychiatrist in another province and was prescribed anti-depressants which he has taken for the last couple of years. Although his symptoms have stabilized so that he can sleep better at night, the appellant notices his memory is not very good and he has to write everything down. The appellant states that he lives with his wife who helps him a great deal with shopping and other tasks and that his son lives nearby and will help if needed.

The appellant's wife states that she has been married to the appellant for 30 years and he has trouble seeing everything and that he has been on CPP disability benefit for 10 years. She states that she has to go with the

appellant for shopping because he cannot see the prices and she needs to be present at all times. The appellant's wife states that he does not do the housework because it takes him too long. The appellant's wife states that she suffers from a heart condition and diabetes, that she does not know how to cook and they have difficulty with meal preparation and need home care. The appellant's wife states that when the appellant is walking outdoors, he cannot read the signs on the sidewalk and he really needs to have someone with him. She further states that she notices signs of the appellant's depression every day because he gets "grouchy" and mad or he will break down and cry sometimes. Although the appellant is taking medications, his wife states that it "...doesn't help much." The panel admitted the oral testimony of the appellant's wife pursuant to Section 22(4) of the Employment and Assistance Act as being in support of the information before the ministry when the decision being appealed was made

The physician who completed the physician report for the PWD application indicated the appellant has been her patient since June 22, 2010 and that the appellant has been diagnosed with reduced vision acuity 10% of normal, astigmatism, he is legally blind and has depression. The physician comments that the appellant has had low visual acuity since birth and began wearing glasses at 16 months of age. He is legally blind with poor reading levels and became depressed after a trauma in 1996. The physician indicates that the appellant can walk 4 or more blocks unaided on a flat surface, he can climb 5 or more stairs unaided, has no limitation in how much weight he can lift, or how long he can remain seated. In the assessor report, the physician indicates that the appellant requires continuous assistance with walking outdoors, that he is independent with walking indoors, climbing stairs, standing, lifting and carrying/holding. The physician reports that the appellant's ability to read is poor, his ability to write is satisfactory, and his ability to speak and hear is good. The physician also reports that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory, perceptual psychomotor and emotional disturbance and indicates these deficits have a moderate impact on emotion, attention/concentration, memory, motivation, other neuropsychological problems and other emotional or mental problems; a minimal impact on impulse control and executive; and no impact on bodily functions, consciousness, insight and judgement, motor activity, language and psychotic symptoms. The physician comments that due to his visual problems and depression, the appellant is avoidant which impacts his daily functioning in a few aspects.

With respect to the impact on daily living activities (DLA), the physician has indicated in the physician report that the appellant requires continuous assistance with basic housework, daily shopping, and mobility outside of the home. She indicates that personal self care, meal preparation, management of medications, mobility inside of the home, use of transportation and management of finances are not restricted. In the assessor report, the physician indicates the appellant takes significantly longer reading prices and labels and that he requires periodic assistance with making appropriate choices. The physician also reports that the appellant requires periodic assistance with his ability to deal appropriately with unexpected demands and comments that he requires personal assistance outside of the home. All other areas related to social functioning are indicated to be independently completed and the physician reports that the appellant has good functioning with his immediate social networks and marginal functioning with his extended social networks.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to Section 2(2), the person must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under Section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry's position is that although the appellant meets criterion 1 and 3 as set out in the legislation, in that he has reached the age of 18 and his impairments are likely, in the opinion of a medical practitioner, to continue for at least 2 years, the evidence does not establish that he has met criterion 2, 4 and 5. In particular, the ministry argues that the evidence does not show that the appellant has a severe mental or physical impairment and the prescribed professional did not confirm that the appellant's physical or mental impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods so that he requires the significant help or supervision of another person to perform these activities. The ministry points out that the appellant's oral testimony about the physical injuries he suffered from the accident he experienced in 1996 raises new issues that were not covered in the application.

The appellant's position is that the evidence establishes that he suffers from a severe mental impairment as a result of depression which arose from the trauma in 1996. The appellant argues that the evidence establishes that he also suffers from a severe physical impairment as a result of his reduced visual acuity which is 10% of normal, the fact that he is legally blind and has astigmatism. The appellant did not expand on the impacts from the physical injuries he suffered in 1996. The appellant contends that the prescribed professional has provided sufficient evidence that the appellant's severe mental impairment and physical impairments directly and significantly restrict his ability to perform many DLA, for which he requires the significant help and supervision of another person, namely his wife and son.

With respect to the existence of a severe physical impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of reduced visual acuity which is 10% of normal, legal blindness and astigmatism, with onset for all conditions "since birth". In the physician report, the physician comments that the appellant's vision problem is hereditary with no surgical intervention and that there is "...no good prognosis at

present." The appellant started wearing eye glasses at the age of 16 months, and he stated that his previous physician told him he would be lucky to have any vision by the age of 50, that he is at high risk of experiencing a detached retina, and that his condition will not improve. The physician who completed the reports notes that, being legally blind, the appellant cannot drive and that he moves in public with difficulty. The physician indicates that the appellant can walk 4 or more blocks unaided on a flat surface, can climb 5 or more stairs unaided, and that there is no limitation in how much weight the appellant can lift or how long he can remain seated. However, in the assessor report the same physician indicates that the appellant requires continuous assistance with walking outdoors, and comments that the appellant has particular difficulty while in the sun and he needs assistance. The physician reports that the appellant's ability to read is poor and his ability to write is satisfactory while his ability to speak and hear is good. The appellant and his wife have provided oral testimony detailing the challenges that the appellant faces every day as a result of his lack of vision and very limited ability to read. Although the appellant does not currently use aids, such as a cane, to assist with his physical impairment, he depends on the assistance of his wife and others in order to safely venture outside his home. In the physician report, the physician notes the connection between the appellant's physical and mental impairments and comments that "...due to his depression and persistent visual problem, his condition is definitely impacting his daily function." Considering the evidence of the persistent, lifelong impact of the appellant's significant visual impairment and the physician's poor prognosis, in conjunction with the appellant's reduced ability to cope with this impairment as a result of depression, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was unreasonable.

With respect to the existence of a severe mental impairment, the panel finds that the evidence of a medical practitioner confirms a diagnosis of depression with an onset of 1996, when the appellant states that he suffered the trauma of being struck by a vehicle. The physician also reports that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory, perceptual psychomotor and emotional disturbance and comments that these are "...due to his visual problem." The physician also indicates these deficits have a moderate impact on the appellant's daily functioning in the areas of emotion, attention/concentration, memory, motivation, other neuropsychological problems and other emotional or mental problems. A minimal impact on daily functioning is noted by the physician for impulse control and executive, and no impact to daily functioning in the areas of bodily functions, consciousness, insight and judgement, motor activity, language and psychotic symptoms. The physician comments that with the appellant's visual problem and depression is having a moderate impact on his daily function in a few aspects. The appellant stated that he had seen a psychiatrist in another province and has been prescribed anti-depressants which have helped stabilize his symptoms and allows him to sleep through the night. With social functioning, the physician has indicated in the assessor report that the appellant is independent in making appropriate social decisions, in his ability to develop and maintain relationships, his ability to interact appropriately with other and his ability to secure assistance from others. She reports that the appellant requires periodic support/supervision as a result of a restriction in the appellant's ability to deal appropriately with unexpected demands, and further comments that "...outside home he does need personal assistance." Good functioning is reported for the appellant's immediate social networks with marginal functioning in extended social networks and the physician has marked "nil" in response to comments. Overall, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Regarding the appellant's ability to manage daily living activities (DLA), the panel has relied on the evidence of the prescribed professional in the PWD application, as supported and clarified by the appellant and his wife. In the physician report, the physician indicates that the appellant is restricted continuously in the areas of basic housework, daily shopping and mobility outside the home with the comment that "...due to his visual problem and astigmatism, he is restricted in all as marked above." However, the physician has indicated in the assessor report that the appellant is independent with all areas of personal care, basic housekeeping, paying rent and bills, managing medications and managing transportation. The physician reports that the appellant requires periodic assistance with making appropriate choices and takes significantly longer than typical when shopping, but comments that: "...personal assistance in few aspects only." The panel finds that the appellant and his wife have provided testimony confirming that the appellant is continuously restricted in basic

housework (laundry and cleaning) as the physician indicated in the physician report, but finds that the appellant is only restricted in two of the tasks identified with shopping (reading prices and labels and making appropriate choices). Overall, the panel finds that the physician has indicated that the appellant is independent in performing almost all of his DLA, or a total of 28 out of a total of 33 aspects. The panel finds that the ministry's decision, which concluded that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person, the panel relies on the information from the physician that the appellant receives help from his family, being his wife and son. The panel finds the appellant has stated he relies upon his wife, to whom he has been married for 30 years, to help him with housekeeping, shopping, and with venturing outside the home. The physician reports there is no assistance provided through the use of assistive devices, that there is no equipment or devices needed, and the applicant does not have an assistance animal. As the panel finds that the evidence does not establish a direct and significant restriction to DLA, the panel finds that the ministry reasonably concluded that the requirement for significant help or supervision to perform DLA under Section 2(2)(b)(ii) of the EAPWDA has not been met.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.