

[REDACTED]

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated May 26, 2008 which held that the appellant did not meet the legislative criteria for designation as a person with disabilities (PWD) under section 2 of the Employment and Assistance Act. The Ministry concluded that the appellant does not have a severe mental or physical impairment and that his impairment does not significantly restrict his ability to perform daily living activities, nor does he require the significant help or supervision of another person to perform daily living activities restricted by his impairment.

## PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2  
Employment and Assistance for Persons with Disabilities Regulation, Section 2

## PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The Dr. states that the appellant is diagnosed with chronic fatigue syndrome, migraine headaches which, according to the appellant, leaves him incapacitated and can last up to 3 days, and anxiety disorder that causes heart palpitations excessive anxiety, worry, trembling, sweating, depression and exhaustion. The Dr. also indicates significant deficits to cognitive and emotional functioning in the areas of executive, memory and emotional disturbance. Appellant's mental health physician reports minimal impact to daily functioning in several areas with insight/judgements and moderate to major impact with emotions.

A nurse from the \_\_\_\_\_ Mental Health Centre states that the appellant has suffered from severe and debilitating mental illness for the past 2 years and has been receiving mental health services in \_\_\_\_\_ since July, 2007.

Appellant's advocate stated the appellant has the physical ability to perform daily living activities but because of his depression, somatization and anxiety disorder, is too exhausted and unmotivated to engage.

Appellant routinely goes for walks in the evenings to lessen his anxieties.

Anxiety induced heart palpitations have required the appellant to initiate 4 emergency hospital visits by ambulance during the past year.

The Ministry representative at the hearing reviewed the reconsideration decision stressing the lack of information from prescribed professionals concerning the frequency or duration of appellant's adverse medical episodes.

ATTACH EXTRA PAGES IF NECESSARY



## **PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry reasonably concluded that the appellant does not meet the test for designation as a person with disabilities under section 2(1) (2) (3) of the Employment and Assistance for Persons with Disabilities Act (EAPWD) because his severe mental impairment does not significantly restrict his ability to perform daily living activities and he does not require help or supervision of another person to perform those activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for Persons with Disabilities designation. The Minister must be satisfied that the person has a severe mental or physical impairment that, in the opinion of a prescribed medical practitioner, is likely to continue for at least 2 years and which directly and significantly restricts the persons ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWD Regulation defines "daily living activities" in relation to persons who have a severe physical or a severe mental impairment.

The Ministry contends that: (a) the assessments from prescribed health professionals do not establish that the appellant's mental impairment significantly restricts his daily living activities either continuously or periodically for extended periods (b) assessments from prescribed medical professionals do not demonstrate a severe mental impairment.

The appellant contends that he meets the test for Person with Disabilities designation because his severe mental impairment directly and significantly restricts his ability to perform daily living activities because his diagnosed conditions of chronic fatigue syndrome, migraine headaches and anxiety disorder leave him too exhausted, unmotivated and depressed to "even care".

While appreciating the appellant's medical condition, the panel found that information was lacking to show the frequency or duration of his medical episodes and whether his impairment directly and significantly either continuously, or periodically for extended periods required help to perform daily living activities in accordance with section 2(b) EAPWD Act. In the physician's report he writes to explain "periodic " as some good days interspersed with bad days. The assessor's report indicates that the appellant is independent in most daily living activities. The mental health nurse writes, "when he(appellant) is suffering from high anxiety it is impossible for him to meet his daily tasks without direction and encouragement". The panel finds that the reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.

**ATTACH EXTRA PAGES IF NECESSARY**