

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

On December 28, 2007, the ministry reviewed and upheld its earlier decision to deny the Persons with Disabilities designation.

The ministry may designate a person as a Person with Disabilities (PWD) if all of the 5 criteria from the legislation have been met. Upon review of the information submitted, the ministry finds that:

1. You do meet the age requirement.
2. The medical practitioner has confirmed that the impairment is likely to continue for at least 2 years.
3. The minister is not satisfied that you have a severe physical or mental impairment.
4. The minister is not satisfied that, in the opinion of a prescribed professional, your daily living activities are directly and significantly restricted, either continuously or periodically for extended periods by a severe impairment.
5. The minister is not satisfied that you require the significant help or supervision of another person, the use of an assistive device or the services of an assistance animal.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment & Assistance for Persons with Disabilities Act, Section 2
Employment & 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 appellant has requested Persons with Disabilities designation, which has been denied by the ministry.

The evidence before the panel consisted of the Appeal Record and a submission by the appellant's advocate encapsulating information within the Appeal Record, and accepted by the panel.

The evidence before the ministry consisted of a physician report diagnosing the appellant as having degenerative disc disease as well as a mental disorder, causing significant deficits with cognitive and emotional functioning. The physician continues to state that the impairment directly restricts the appellant's ability to perform Daily Living Activities, specifically, personal self care, meal preparation, management of medications, basic housework and mobility inside and outside the home, all of which are periodically restricted. Further, back pain limits his activities and he needs help with housework and lifting. The Assessor Report which is also completed by the physician indicates the appellant's ability to walk indoors and outdoors, climb stairs, stand, lift and carry are all permanently restricted due to back pain, and that he needs to hold on to furniture to get up from sitting and lying. The following Daily Living Activities take significantly longer than typical; dressing, grooming, bathing, toileting, transferring in and out of bed, and on and off a chair, laundry, basic housekeeping, going to and from stores and carrying purchases home. Assistance is provided by Health Authority Professionals, volunteers and community service agencies. The appellant uses furniture, counters, etc. at times to move around the house. The Assessor has advised a walker is required, but not used at this time. The ministry representative had nothing to add at the hearing and referred to the Appeal Record.

The appellant provided oral testimony that he does have a vehicle and drives on occasion, but has experienced situations where his legs 'give out' while driving, and has stalled at intersections. He has also experienced times when he has had to leave his vehicle downtown and take a taxi home due to his restrictions. He receives help from friends with cleaning and meal preparation, and when questioned about the use of a walker, says it would be more cumbersome to use a walker and uses the existing furniture in the house instead to help himself get around.

The panel has accepted the information in the Appeal Record regarding the appellant's restrictions as described by the medical professionals, as well as the appellant's oral testimony which is in support of the evidence before the ministry.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue before the panel was whether the ministry's decision to deny Persons with Disabilities designation was reasonably supported by the evidence, or a reasonable application of the legislation.

The legislation authorizes the minister to designate a person who has reached the age of 18 years as a person with disabilities if the minister is satisfied that the person has a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to continue for at least 2 years, and, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods. The prescribed professional must also confirm that, as a result of those restrictions, the person requires help to perform those activities.

In this case, the ministry agreed that the appellant meets both the age and duration requirements. The ministry argues that the medical reports do not establish a severe physical or mental impairment, and state that moderate and minimal cognitive and emotional impacts are noted for daily functioning. The ministry further argues that some daily living activities, such as, meal planning, food preparation and cooking do take significantly longer to perform, but there is no information whether the restrictions are due to physical or mental impairment, or how much longer than is typical these activities take. In terms of support required, the ministry does acknowledge the prescribed professional's comment 'during these periods could benefit from home care for meals, housework', but states there is no indication whether this is due to physical or mental impairment, or the frequency of this need.

The appellant argues that there is sufficient information provided by both the medical practitioner and the prescribed professionals to support the designation of Persons with Disabilities in this case.

The panel finds that the legislative test that must be met are whether the appellant has a severe mental or physical impairment that directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods, and that help is required to perform these activities. The medical practitioner has stated there are significant deficits with cognitive and emotional functioning with the impairment directly restricting the appellant's ability to perform daily living activities periodically. Further, the medical practitioner states physical back pain also limits his activities, and he needs help with housework and lifting. The prescribed professional has also indicated the appellant needs a walker, and the help required for daily living activities are provided by health authority professionals, volunteers and community service agencies.

The panel has determined that the ministry's decision to deny Persons with Disabilities designation is not a reasonable application of the legislation, and the panel must rescind the ministry's decision.

ATTACH EXTRA PAGES IF NECESSARY