

Part C – Decision Under Appeal

(State the reconsideration decision)

The reconsideration decision made on April 10, 2008 was that the appellant did not meet the criteria to be designated as a Person with Disabilities. Based on the information provided to the Ministry, the Ministry found that the appellant did not meet the following criteria:

- The appellant did not have a severe mental or physical impairment.
- The appellant's impairment did not significantly restrict the appellant's ability to perform daily living activities.
- The appellant did not require the significant help or supervision of another person to perform daily living activities restricted by the appellant's impairment.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

- Employment and Assistance for Person's with Disabilities Act. EAPWDA
Section 2.
- Employment and Assistance for Persons with Disabilities Regulations, 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 did not appear at the Panel hearing. On February 5, 2008 the appellant submitted a Persons with Disabilities application to the Ministry. The appellant suffers from Ischemic heart disease, cerebellar ataxia, and osteoarthritis. The appellant's physician confirmed that the appellant's impairment would likely continue for the appellant's lifetime. The appellant states in his Persons with Disabilities application that his conditions result in swelling and joint pain, shortness of breath, and fatigue. The appellant states that because of his impairment he is unable to function as he once did.

The evidence before the Ministry was that the appellant did meet the age criteria and did have a condition that was likely to persist for at least two years. Evidence provided in the physician's report and the assessor's report indicated that while the appellant does face some restrictions to his activities, those restrictions were not shown or described to be severe. The evidence provided by the physicians also did not suggest that the appellant had a severe mental impairment.

The evidence before the Ministry did not suggest that the appellant's condition significantly restricted daily living activities. Both physicians' reports indicate that almost all aspects of the appellant's daily living are managed independently. The evidence also did not suggest that the appellant required help to carry out daily living activities.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

Legislation

The issue to be decided is the reasonableness of the Ministry's decision to deny the appellant a Persons with Disabilities designation.

The legislation, EAPWDA, Section 2[2] allows the Minister to designate a person who has reached 18 years of age as a person with disabilities if the Minister is satisfied that in the opinion of a medical practitioner that the person has a severe mental or physical impairment that: Is likely to continue for at least two years; that 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; and that as a result of those restrictions the person requires help to perform those activities.

The Ministry argues that based on the two physician's reports the case can not be made that the appellant has a severe mental or physical impairment. Further, the Ministry argues that the physicians' reports indicate that the appellant is not significantly restricted in performing daily living activities. Since there are no significant restrictions, a case can not be made that the appellant requires assistance.

The appellant contends that he suffers significant pain that significantly restricts his activities. The appellant did not meet the criteria set out in the Act to be designated as a Person with Disabilities.

The physicians report indicates no restrictions to daily living activities, and the assessors report also indicates that the appellant is independent in most daily living activities, requiring periodic assistance with lifting, carrying and holding, grooming, going to and from stores, and cooking. The medical evidence does not support a severe mental or physical impairment. Therefore, the Panel determines that the Ministry decision is a reasonable application of the legislation.

The Panel must confirm the Ministry's decision.