



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated February 25, 2008, which held that the Appellant is not eligible for designation as a Person with Disabilities (PWD) because he does not meet the legislative requirement that he have a severe mental or physical impairment that in the opinion of a prescribed professional significantly restricts his ability to perform activities of daily living, and, as a result of those restrictions, requires help to perform those activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

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

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 evidence before the Ministry at Reconsideration included:

- the Appellant's Persons with Disabilities Designation (PWD) Application
- the Ministry's PWD Case Profile Sheet
- the Ministry Adjudicator's letter of denial dated January 7, 2008
- the Appellant's Request for Reconsideration

The Appellant submitted a letter from an educational psychologist dated March 28, 2008 outlining his emotional and academic functioning. The Ministry Representative had no comment. It was admitted by the Panel as evidence from a prescribed professional.

The Appellant's evidence is that he was diagnosed in 2000 with a tumour affecting his pineal gland. He underwent two surgeries and radiation therapy that year. Because the pineal gland is involved in the regulation of sleep, he was left with a sleep disorder which causes fatigue. He experiences difficulty concentrating and, as a result, studying. He is currently seeing a psychiatrist for treatment of depression.

With regard to his ability to perform activities of daily living, the Appellant gave evidence that he requires assistance with meal preparation and cleaning, receiving assistance from his roommate. He is able to do most daily activities some of the time, but he requires periodic assistance, depending on his depression. He is able to access public transportation and attends a community college part-time. He gave evidence that he will start occupational therapy soon.

The Ministry's evidence is that the Appellant's application for PWD designation does not meet the legislative criteria; specifically he does not have a severe mental or physical impairment and the requirement of Section 2(2)(b), which requires that an applicant have a condition that directly and significantly restricts his ability to perform activities of daily living, and, as a result of those restrictions, requires help to perform them. The Physician's and Assessor's sections of the PWD application conflict with regard to his ability to perform activities of daily living.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is the reasonableness of the Ministry's decision to deny Persons with Disability designation to the Appellant.

Section 2 of the EAPWDA authorizes the minister to designate a person as a PWD 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 significant help to perform those activities.

The Appellant's position is that he has a severe condition that is not well described by the criteria used in the PWD application form. His disability, depression, is invisible, but it affects all aspects of his life. He requires periodic assistance with daily living activities, depending on his condition.

The Panel admitted as evidence a letter from an educational psychologist which outlines the Appellant's difficulties with his academic studies. She confirms that his depression has seriously impacted his ability to progress academically and supports his need for financial support. The Panel notes that the psychologist's letter of support confirms that the Appellant experiences considerable difficulties; however it does not assist in a determination that he meets the legislative requirements for designation as a PWD.

The Ministry's evidence is that the information contained in the Appellant's PWD application is not sufficient to determine that he meets the legislative criteria for designation as a PWD.

The Panel finds that it has not been established that the Appellant has a severe mental or physical condition and his condition does not result in significant restrictions in his ability to perform activities of daily living. He is able to attend school and access public transportation, and although he requires periodic assistance with some activities of daily living, the evidence does not support a determination that his restrictions are significant.

The Panel unanimously finds that the Ministry's decision to deny the Appellant's application for PWD designation was reasonably supported by the evidence under Section 24(1)(a) of the Employment and Assistance Act, and confirms the decision.

ATTACH EXTRA PAGES IF NECESSARY