

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Appellant was denied her application for designation as a Person with Disabilities. The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Persons with Disabilities Act, (EAPWDA) namely, the following criteria;

The minister is not satisfied that in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities is restricted directly and significantly either continuously or periodically for extended periods; and

The minister is not satisfied that the Appellant requires significant help from an assistive device, an assistance animal or other persons.

## PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, sec 2  
Employment and Assistance for Persons with Disabilities Regulation , sec2

## 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 lives alone in a trailer. He is diagnosed as suffering from degenerative disc disease in the lumbar spine and the cervical spine, severe osteoarthritis and sciatica. He takes prescription medication, consisting of 4mg of Hydromorphone ("morphine") daily for pain. The Panel reviewed the Appeal Record which included administrative information and the following:

- Notice of Appeal dated August 25, 2008
- Reconsideration Decision dated August 18, 2008;
- Appellant's Request for Reconsideration application form, August 6, 2008
- Physicians letter dated May 21 2008
- Physicians letter dated August 7, 2008
- Spruce Capital Letter August 6, 2008
- 2 copies of prescription receipts
- Copy of Appointment Card for Chronic Pain Clinic , Faculty of Medicine , UBC , Regional Hospital
- Physicians Report, June 16, 2008
- Assessor's Report; July 22, 2008
- Assessor's Report unsigned and undated
- Extracts from legislation
- PWD case profile sheet

The Appellant argued that the evidence supported a finding that the Appellant was significantly and directly restricted from performing daily living activities. He referred to the 6 daily living activities that were marked by the Doctor as restricted on Part C of the Assessor's Report. He said his application was made on the basis of a physical disability not a mental disability. He emphasized the restrictions on his ability to perform the physical daily living activities particularly the much longer time required for tasks as stated by the Physician. He described chronic pain and the loss of all feeling from his waist down if he stood unaided for more than five minutes. Without feeling he is unable to keep his balance and must sit down immediately. He is also unable to manage bladder control.

The Appellant states that he has at least 25 appointments with his Doctor per year.

The Appellant stated that the need for help from friends was mentioned by the Doctor in Part D of the Assessor's report as was the fact that the Appellant utilized an assistive device. The Appellant receives regular assistance from a neighbour who takes him shopping and drives him to appointments. He submits that she is independent and able to assist him whenever required.

The oral testimony was accepted as evidence in support of material on record.

The Ministry explained that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD Act and the reason for the rejection of his application was that the Ministry was not satisfied that the two criteria mentioned above were satisfied. She read from the reasons set out in the written Reconsideration Decision to explain why the two criteria were not satisfied in the view of the Ministry. She stated that the Physician's report had marked the Appellant independent in the majority of

categories of the form that listed types of Daily Living Activities. She also stated that the Doctor had not provided enough detail as to the frequency that the Appellant needs to use the assistive device.

The Appellant stated that he suffered from a physical disability not a mental disability. The Panel gave greater weight in its consideration to those daily living activities that required mainly physical ability. The Appellant was marked as restricted in 10 of 14 skills in Part C of the Assessor's Report that mainly required a physical ability for performance.

The Panel observed that there were two assessor's reports in the material. One was not signed and was not identical to the Assessor's Report that was signed. The Panel only considered the Report signed by the Assessor. In that Report the Assessor marked, in part B 1, the activities that impact his ability to manage his daily living activities as follows: "walking, standing, sitting, extreme pain". In part B3 he indicated that all the activities required an assistive device and specifically stated a cane for each of the following activities that were listed, namely: walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding. Both reports (Physician and Assessor) considered together, refer to the Appellant's reliance on a cane in seven specific instances.

In Part E, Additional Information , the Assessor added the following information as relevant to understanding the nature and extent of the appellant's impairment and its effect on daily living activities:

" extreme arthritis; back , neck"

The Appellant presented a physician's letter of August 7 2008 as evidence. The Panel considered the issue of admissibility and accepted the letter as evidence in support of material already before the ministry. The letter stated that the appellant has severe osteoarthritis of the lumbar spine resulting in sciatica, and that he was under the care of the anesthesiologist at the local Pain Clinic to help manage his symptoms. The evidence shows that Appellant's daily prescription for morphine has increased to 4mg per day. The Doctor states in the August 7 2008 letter that he does not expect his symptoms to resolve any time soon as the nature of osteoarthritis is that it will progress.

In Summary the Panel finds the following facts :

- The Appellant and suffers from Sciatica, Degenerative Disc Disease , and osteoarthritis that is severe.
- The impairment will last longer than 2 years
- The Appellant receives assistance from a friend who is neighbour who is on call for him.
- The Appellant relies heavily on a cane for mobility and balance continuously except when lying down.
- The Appellant does not have a mental impairment.
- The Appellant takes significantly longer than a normal healthy person to perform daily living activities and cannot perform some activities at all.
- The Physican and Assessor stated that the Appellant is able to stand or sit for only short periods of time and is unable to walk or stand without a cane.

ATTACH EXTRA PAGES IF NECESSARY

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue is whether the decision to deny the Appellant's application for Persons with Disabilities (PWD) designation was a reasonable application of the EAPWDA and Regulations. Sec 2 of the EAPWDA lists five criteria that must be evident before a person may qualify as a person with disabilities under the EAPWDA.

The Ministry's position is all five criteria must be satisfied to be eligible and the Appellant did not satisfy two requirements. The criteria set out in the EAPWDA are 1. he had to be over 18 years of age, 2. his impairment must last more than two years, and 3. he must have a severe physical impairment., 4. His doctor must give the opinion that he is significantly restricted in his ability to perform daily living activities continuously or periodically for extended periods and 5 he needed significant assistance from another person, an assistive device, or an assistance animal to perform the daily living activities.

The Ministry was satisfied the Appellant met the first three criteria of age, duration and severity. The ministry was not satisfied that the Appellant was significantly restricted in his ability to perform daily living activities nor that he needed assistance to perform them.

The Ministry's position was that the Doctor had not provided enough details of the Appellant's restrictions in performing his daily living activities and how much support he needed from others, an assistive device or an assistance animal. The opinion of the Doctor that the Appellant took significantly longer to perform daily living activities and that he relied on a cane was not sufficient for their determination that he met the last two criteria for PWD designation.

The Appellant presented his position by describing the restrictions that affected him on a daily basis. He explained the pain he had and the morphine which he had to use to bear it. The Doctor and the Assessor completed their Reports which contained sections that dealt with restrictions on his ability to perform daily living activities. A careful examination of the reports shows that on the categories of the Assessor's Report and Physician's Report that deal with Daily Living Activities the Appellant is restricted in virtually all of the categories that include a physical or mobility component. He is not restricted in categories requiring mainly a mental component such as banking or paying bills.

At the hearing the Appellant described the consequence and escalation of his severe back pain when standing up or walking which leads to a loss of feeling in his lower body. This results in him having to

immediately sit down (even on the floor) as he has no feeling in his feet and can barely walk. On occasion it causes him the embarrassment of loss of bladder control.

All of the medical reports and letters described a severe limitation in standing and sitting. This would lead to the conclusion that the Appellant was significantly restricted in his ability to perform all daily living activities that require the ability to stand up or walk unaided either continuously or periodically for extended periods.

The Panel gave the greatest weight to those daily living activities that required a physical component because the Appellant had applied for the designation of Person with Disabilities (PWD) on the basis of a physical impairment not a mental impairment. The medical evidence supported the conclusion that the Appellant was significantly restricted from performing the majority of his daily living activities because of a physical disability and the Doctors also included many references to his need for an assistive device to perform his daily living activities.

.The Panel found that there was sufficient information from the Doctor to conclude the Doctor was of the opinion that the Appellant heavily relied on his cane for balance and support whenever he stood up or walked. In the August 7 2008 letter the Doctor's confirmed that the severity of the osteoarthritis and sciatica significantly restricted the Appellant from standing or sitting for any length of time.

The Doctor also noted in Part D of the Assessor's Report that he received help from other persons. The Appellant corroborated this with the information that he had a neighbour who helped him. This friend was available to drive him to appointments, help him do shopping and take him where he needed to go. The Appellant is unable to drive due to the effects of his medication that make him drowsy as reported in the Physician's Report.

For these reasons the Panel finds that the Ministry's Decision was not a reasonable application of the legislation in the Appellants circumstances. The Panel rescinds the Reconsideration Decision