

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In the reconsideration decision of August 18, 2008, the appellant was denied status as a person with disabilities (PWD) because the ministry found that he did not have a severe mental or physical impairment, his impairment did not significantly restrict his ability to perform daily living activities and he did not require the significant help or supervision of another person to perform daily living 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 reconsideration officer consisted of a Physician's Report dated May 21, 2008, an Assessor's Report dated May 21, 2008 and the appellant's letter of August 7, 2008.

The Physician's Report states that the appellant suffers from degenerative disc disease at C4/C5, osteoarthritis of the neck and thoracic spine, thoracic spine scoliosis, peptic ulcer and depression. The physician further states that the appellant suffers from chronic neck and spine pain and has a disc bulge in his neck which causes neuropathic pain and other symptoms. The appellant also suffers from depression which leads to poor motivation. The Physician's Report notes the appellant can walk 4+ blocks, climb 5+ steps but can sit less than 1 hour and lift only 5 to 15 pounds. He has significant deficits in executive function, emotional disturbance and motivation due to ongoing depression.

In the Assessor's Report, the physician notes that it takes significantly longer walking outdoors and standing due to arthritis and pain and he takes significantly longer with basic housekeeping. In this report the physician notes moderate impact in emotion and motivation and minimal impact in executive and memory functioning due to depression and chronic pain.

The appellant attended the hearing and advised the panel that he was injured in a serious skidder accident which caused him to fall approximately 60 feet. He returned to work in a sawmill 7 weeks after the initial accident but his physical condition has continued to decline to the extent that he has not been able to work for the past years. He lives with his wife and child. His wife does the majority of the housekeeping and does all of the shopping. While the appellant is able to do some activities such as walking or mowing the lawn, it takes him significantly longer to do these tasks and he will then sometimes be bedridden for days afterward. He suffers from constant pain which is at times so severe in his neck that it causes him to be nauseous. The appellant did attend at his physician's office while the form was being completed but the physician also completed some of the form on his own. The appellant has attended this physician for about 3 years and sees him monthly. The appellant is taking Tylenol 3 (every 4 hours) as well as Gabapentin and Prozac twice per day. The panel admitted this oral evidence pursuant to section 22(4) of the Employment and Assistance Act (EAA) in support of the evidence which was before the ministry.

The ministry reviewed the legislation and medical evidence provided by the physician and submits that the decision of the reconsideration officer should be upheld as the appellant does not meet the legislative criteria based on the evidence provided by the physician.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The panel must decide whether the ministry's decision to deny PWD status to the appellant was reasonably supported by the evidence.

The EAPWDA, section 2, sets out 5 criteria to be designated as a PWD:

1. The appellant must have reached the age of 18;
2. The minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities.

There is no dispute that the appellant meets criteria 1 and 3; he is over the age of 18 and his medical practitioner has confirmed that his condition will continue for at least 2 years.

The ministry's position is that the appellant has not met criteria 2, 4 and 5 based on the information that was submitted by his physician.

The appellant's position is that he is eligible for PWD status due to his medical conditions.

The panel accepts that the appellant suffers from significant pain and as a result of this pain his lifestyle and activities are affected. The panel further accepts that the appellant's wife does most of the household activities. However, while the panel accepts this information, it has not been confirmed by the appellant's medical practitioner and as such the panel is not able to place significant weight on this evidence.

The evidence of the physician indicates that the appellant suffers from a moderate physical and mental impairment rather than a severe physical or mental impairment as required by the legislation.

While the evidence of the physician indicates that the appellant suffers from physical and mental impairments that affect his daily living activities, the physician has not provided sufficient evidence to establish that, in his opinion, the impairment directly and significantly restricts the appellant's ability to perform daily living activities, either continuously or periodically for extended periods.

As the physician has not provided evidence sufficient to establish that the appellant's daily living activities are directly and significantly restricted, the panel cannot find that the appellant requires help to perform those activities.

Based on the information provided by the physician, it was reasonable for the minister to conclude that the appellant has not met criteria 2, 4 and 5.

ATTACH EXTRA PAGES IF NECESSARY

The panel therefore determines that the ministry's decision is reasonably supported by the evidence and that decision is confirmed.