

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated January 9th, 2008 which held that the appellant did not meet the legislative criteria for designation as a person with disabilities (PWD) under section 2 of the Employment and Assistance for Persons with Disabilities Act. The Ministry concluded that the appellant's mental or physical impairment did not restrict his ability to perform daily living activities and he did not require help or supervision of another person, the use of an assistance device or the services of an assistance animal to perform these activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
Employment and Assistance for Persons with Disabilities (EAPWD) 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 evidence before the Ministry was comprised of the original application for PWD designation completed by the appellant's doctor and a letter from the appellant's mother outlining her son's medical issues and the assistance she supplies to him. The medical report indicates the appellant suffers from chronic back pain and is generally in a poor state of health for someone of his age. The doctor's report further indicates the appellant may suffer from fibromyalgia, chronic fatigue syndrome and has an undiagnosed frequency of urine. The report indicates the appellant can climb 5 or more steps, lift 2-7 kg, sit for less than an hour, walk independently indoors and out, climb stairs and stand without assistance. It is reported that periodic help is required to lift/carry/hold heavy objects. No assistive device is used to compensate for physical impairment. The medical report indicates that excessive bladder irritability will impact negatively on the patient's ability to function and is the only physical health issue with a major impact.

With regards to mental limitations, there is no identified mental condition or brain injury. The prescribed health professional indicates two significant deficits to cognitive and emotional functioning in the areas of emotional disturbances and motivation where the report indicates the appellant has low motivation.

The appellant gave evidence at the hearing that his doctor did not consult with him when he completed the medical report and took an extremely long time to obtain the completed report. As a result the appellant does not believe the medical report gives a clear picture of his health issues. The appellant stated he suffers from considerable limitations in his movements as a result of back pain from injuries at work and several car accidents. He reported he has little to no feeling in his right leg and arm. He detailed his daily living limitations where he has trouble standing, walking, cooking his meals, doing household chores and performing hygienic functions such as shaving. He reported that his mother and 12 yr.old daughter are his main sources of support. His daughter assists in cooking and cleaning and his mother drives him to appointments, pays his bills and assists with cleaning. The appellant reported bladder issues where he has to relieve himself often and is limited in not being far from a bathroom. It was further reported that the appellant has a scheduled appointment with a urologist and is being treated for mental health issues. He reported he also suffers from migraine headaches and has been admitted to hospital several times over the past few years for treatment.

The Ministry submitted a document outlining their position and the legislative criteria that must be met to qualify for PWD status. The document listed the criteria met by the appellant and the areas not met. The submission was accepted by the panel.

It was the Ministry's position that the appellant did not establish he has a severe physical or mental impairment that results in a significant restriction of his daily living activities and there is no evidence an assistive device is used or an assistance animal.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry reasonably concluded that the appellant does not meet the test for persons with disabilities under section 2(1) of the EAPWD Act because his physical or mental impairment does not significantly restrict his ability to perform daily living activities and he does not require help to perform those activities or the use of an assistance animal.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Ministry must be satisfied that the person has a severe mental or physical impairment that, in the opinion of a prescribed professional is likely to continue for at least 2 years and directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities or the use of an assistance animal. Section 2 of the EAPWD Regulation defines "daily living activities" in relation to persons who have a severe physical or a severe mental impairment.

The appellant believes he is eligible for PWD status due to his medical conditions and believes his doctor was not accurate in his assessment of how his health issue affected his daily living activities.

While the evidence indicates the appellant's conditions cause some restrictions in daily living activities and personal self-care, the prescribed professional generally indicates the appellant is mostly independent. Evidence indicates some tasks are difficult to perform or require assistance from another person, however overall restrictions on daily living activities are assessed, by the prescribed professional as being moderate in nature.

The Ministry contends that the assessments from the prescribed professional do not establish that the appellant's physical or mental impairment is severe or significantly restricts his daily living activities either continuously or periodically for extended periods. Further it cannot be determined that significant help or supervision of another person, the use of an assistance device or the services of an assistance animal is required.

While the evidence of the appellant indicates he has considerable limitations in his daily living activities due to his health issues the medical assessor report does not support his contention. The medical report indicates the majority of limitations are moderate in nature and the appellant is basically independent in daily living activities. The legislation requires a prescribed professional assess a persons a ability to perform daily living activities.

The panel finds the Ministry decision is reasonably supported by the evidence from the prescribed professional which describes the appellant's physical condition as having only a moderate effect on restricting his daily living activities, is not a severe medical or mental condition and he does not require significant help or supervision of another person to perform daily living activities.

The panel finds that the reconsideration decision is reasonably supported by the evidence and confirms the Ministry decision under section 24(2)(a) of the EAA.

ATTACH EXTRA PAGES IF NECESSARY