

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated June 27, 2008 which held that the appellant did not meet all of the legislative criteria required 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 did not have a severe mental or physical impairment ,
- that the information from a prescribed professional did not confirm that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and
- that the information from a prescribed professional did not confirm that as a result of direct and significant restrictions, she requires help 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 Ministry was comprised of:

- An application for PWD designation dated April 24, 2008 with the Assessor Report completed by a doctor.

On his Application for Persons with Disabilities (PWD) designation, the appellant lists his disabilities as Hepatitis C, Irritable Bowel Syndrome (IBS), high blood pressure, post traumatic stress syndrome, arthritis of the neck, shoulder and hip, tinnitus in both ears, depression and chronic pain. He states he has trouble expressing himself, that he can only walk a block until the pain becomes unbearable to the point he has to stop. He states he gets pain from the Hepatitis C and cramps from the IBS. Also, he said he is troubled by fatigue and frequent drowsiness throughout the day.

The appellant attributes the post traumatic stress to a term spent in a juvenile training school where he states he was sexually, physically and mentally abused. As far as daily living activities are concerned, he states he has to shower in tepid water only as he is heat and cold sensitive. It takes him twice as long to groom himself. The appellant states he requires assistance with lifting heavier things, such as furniture and also needs help with shopping and said his roommate's son will go to the store for him.

The appellant's landlady told the panel the appellant has problems with frequent visits to the toilet and this can be troublesome when other people also wish to use that facility. She occasionally cooks for the appellant and tries to cook food that will not disagree with his stomach and bowels.

The doctor who completed the medical report states the appellant reported he experiences pain after walking one block and has to use a hand rail for support. The doctor said the appellant also reported pain and fatigue most of the time. The only item the doctor reported as having a major impact on the appellant was his bodily functions requiring him to have easy access to toilet facilities. The doctor described him as independent in most of his daily living activities but requiring some assistance getting in and out of vehicles.

The Ministry representative stated that the Ministry examined the medical information and considered whether the appellant met the legislative requirements to be designated as a PWD. In the PWD application, his doctor noted that he was independent in most of his daily living activities and while he stated that he needed periodic assistance in some activities, he did not provide information regarding length, extent, frequency or duration of his restrictions.

The Panel accepted as fact the medical evidence of the doctor.

PART F - REASONS FOR THE PANEL DECISION:

The issue in this appeal is whether the Ministry reasonably concluded that the appellant does not meet the test to be designated as a PWD under section 2 of the EAPWD Act because :

- the appellant does not have a severe mental or physical impairment ,
- that, in the opinion of a prescribed professional, his daily living activities are not directly and significantly restricted either continuously or periodically for extended periods and
- that as he is not significantly restricted with daily living activities, it cannot be determined that he requires significant help or supervision of another person, the use of an assistive device or the services of an assistance animal to perform those activities.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Ministry must be satisfied that the person is over 18, 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, 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 as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWDR defines "daily living activities" in relation to persons who have a severe physical or mental impairment.

The Ministry acknowledges that the appellant is over 18 years of age but contends that the information from his doctor does not establish that the appellant has a severe mental or physical impairment that significantly restricts his ability to perform his daily living activities and he does not need significant help to perform these activities.

The appellant contends that he meets the criteria for PWD designation because he has a severe physical impairment that directly and significantly restricts his ability to perform his daily living activities. While he described his limitations in the hearing, the Panel considered that they had already been fairly described by his doctor.

Based on the medical information, the Panel found it reasonable that the appellant did not have a severe mental or physical impairment. Although the appellant is described as having "depression" and "pain", the doctor does not indicate that this means that he is severely impaired in his functioning. Indeed, he describes the appellant as being independent in most of his daily living activities.

The Panel also found that that the appellant is not significantly restricted in performing his daily living activities. Although the appellant argues that he is significantly restricted, his doctor does not indicate such. As it was not established on the medical information that the appellant was significantly restricted in his daily living activities, the Panel found that it was reasonable for the Ministry to conclude that it could not be determined that the appellant required significant help.

The Panel concluded that it was reasonable for the Ministry to find that the appellant does not meet the legislative criteria for PWD designation as required by *EAPWDA*, section 2. The Panel found that the Reconsideration Decision is supported by the evidence and confirms the Ministry's decision.