

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

In the Ministry's Reconsideration Decision of January 21, 2008, the appellant was denied status as a Person with Disabilities (PWD) on the following basis:

- 1) His impairment does not significantly restrict his ability to perform daily living activities;
- 2) He does not require the significant help or supervision of another person to perform daily living activities restricted by his impairment.

**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).

November 29, 2007 - the appellant submitted a PWD application to the ministry

December 12, 2007 - the ministry denied the request

January 7, 2008 - the appellant submitted a Request for Reconsideration

January 21, 2008 - the ministry completed its review of the Request for Reconsideration

The evidence before the Reconsideration Officer consisted of the appellant's original PWD application including a Physician's Report and Assessor's Report completed by his family physician in addition to a statement provided by the appellant with his Request for Reconsideration.

The physician diagnoses the appellant with musculoskeletal and degenerative disc disease and notes "prolapsed lumbar disc. Failed surgery. He is expected to undergo a further surgery. He may well have on-going back pain." In the Physician's report, the physician indicates the appellant's functional limitations as lifting under 2kg and remaining seated less than 1 hour. The physician did not complete the Daily Living Activities section regarding restrictions but notes the appellant is "Disabled totally at this time. Further surgery being considered."

In the Assessor's Report, the physician specifies that the appellant lives in a "stable home" with family, friends or a caregiver. Periodic assistance is required for standing and continuous assistance is required for lifting, carrying and holding with the notation that he has severe lumbar pain and sciatica. The appellant is noted to take significant longer to do laundry, basic housekeeping and food preparation and requires periodic assistance with getting in and out of a vehicle and using public transportation. The appellant receives assistance from family and friends and uses a cane.

The appellant did not attend the hearing and as such the panel reviewed and relied upon the appellant's written statement to the Reconsideration Officer and the evidence of his physician.

The Ministry representative reviewed the Ministry's Reconsideration Decision and submits that this decision should be confirmed. He notes that the appellant meets 3 of the 5 required criteria but there is limited information on the appellant's limitations on his daily living activities (DLA) and the help he requires. The Ministry attempted to contact the physician on 3 occasions in January 2008 in order to clarify some information but the physician did not respond and the appellant has not attended the hearing in order to provide supporting information.

ATTACH EXTRA PAGES IF NECESSARY

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue before the Panel is the reasonableness of the Ministry's decision to deny Persons with Disabilities (PWD) status to the appellant.

In order to qualify for PWD status, the appellant must meet the criteria set out in section 2 of the EAPWDA as follows:

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

In applying number 4 of the criteria, Section 2(a) of the EAPWDR lists specific areas of restriction to be identified in relation to a person with a severe mental or physical impairment.

The Ministry concedes that the appellant satisfies the criteria of having reached the age of 18, his impairment is likely to continue for at least 2 years and he has a severe physical impairment.

The appellant's position is that he satisfies all of the criteria required by the legislation based on the severity of his condition and the information provided by his medical practitioner.

The Panel finds that the prescribed professional has not sufficiently confirmed that the appellant's impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods. Although the physician states that the appellant is "totally disabled at this time" he fails to identify limitations in the appellant's DLA sufficient to satisfy the legislative requirement. The Panel therefore finds that the appellant has failed to meet the 4<sup>th</sup> criteria of the legislation.

Having found that the appellant was not significantly restricted with DLA, the Reconsideration Decision states that it could not be determined that the appellant required the significant help or supervision of another person, use of an assistive device or the services of an assistive animal. As the Panel finds the physician's information insufficient to establish that the appellant has significantly restricted DLA, the panel is unable to find that the appellant requires help to perform these DLA. The Panel therefore finds that the appellant has failed to meet the 5<sup>th</sup> criteria of the legislation.

Based on the evidence before the Panel, the Panel concludes that the decision of the Ministry is reasonably supported by the evidence and the decision is therefore confirmed.

ATTACH EXTRA PAGES IF NECESSARY