

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated February 1, 2008, which held that the Appellant does not meet the legislative criteria for designation as a Person with Disabilities (PWD). Section 2, EAPWDA and Section 2, EAPWDR list five criteria that must be met in order for an applicant to be designated as a PWD. The Ministry held that the Appellant met two of the five criteria - age and the likely duration of his condition. The Ministry found that he did not meet the criteria regarding severity of his condition, restrictions on the performance of daily living activities nor the requirement for assistance to perform daily living activities as a direct result of 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).

The evidence before the Ministry at Reconsideration was:

- the Appellant's Persons with Disabilities (PWD) Designation Application, dated October 5, 2007
- the Ministry's PWD Case Profile Sheet dated October 16, 2007
- the Ministry adjudicator's letter denying the Appellant's PWD application, dated October 30, 2007
- the Appellant's Request for Reconsideration, dated January 8, 2007
- the Reconsideration Decision, dated February 1, 2008

The Appellant gave oral evidence that was admitted by the Panel under Section 22(4)(b) of the Employment and Assistance Act.

The Appellant gave evidence that he suffered a work-related injury several years ago. He was paid for eight months by the Workers Compensation Board, and then his claim was terminated. He is unable to work, and is classified as a Person with Persistent Multiple Barriers to Employment (PPMB) by the Ministry. The Appellant's evidence is that he cannot work and that he requires a higher level of income assistance in order to survive. He also gave evidence that he cannot perform daily living activities when his pain is severe. He does not have sufficient income to meet expenses. He is in need of better food and housing, and requires a higher level of assistance. With regard to his condition, he always suffers back pain; he drops things due to weakness in his hand and experiences dizziness. When his pain is severe he has difficulties performing activities of daily living. He does not take any pain medication at this time due to the side effects he experiences.

In the absence of a Ministry representative, the Panel relies on the written material included in the Appeal Record.

In the Reconsideration Decision, the Ministry stated that the Appellant's physician did not indicate any requirement for assistance from an assistive device or the significant help or supervision of another person or the services of an assistance animal. Although a requirement for periodic assistance is noted, there is no reference to the frequency or duration. All daily living activities are noted as independently performed with the exception of periodic assistance with basic housekeeping, food preparation, cooking and carrying purchases home. The Ministry concluded that the Appellant does not have a severe physical impairment. With regard to mental impairment, the Appellant's physician noted that he is independent in all aspects of social functioning. In the section dealing with cognitive or physical impairment, only minimal impairment is noted. The Ministry concluded that the Appellant does not have a severe mental impairment. There are no notations in the section dealing with assistance provided for the applicant.

The Ministry concluded that the Appellant does not meet the legislative requirements for designation as a PWD.

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The main issue in this appeal is whether the Ministry reasonably concluded that the Appellant does not meet the legislative requirements for designation as a Person with Disabilities (PWD).

Section 2 of the EAPWDA authorizes the minister to designate a person as a PWD if the minister is satisfied that the person 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, 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. The prescribed professional must also confirm that, as a result of those restrictions, the person requires significant help to perform those activities.

The Appellant's position is that the Ministry's decision to deny his application is unreasonable because the criteria for designation as a PWD are unfair. He does not have sufficient income to meet expenses and he requires a higher level of income assistance in order to survive. He also gave evidence that he cannot perform daily living activities when his pain is severe.

The Ministry found that the Appellant met two of the five legislative criteria – age and duration of the condition. The Ministry found, however, that he does not have a severe mental or physical impairment, that a prescribed professional has not confirmed that the condition significantly and directly restricts his ability to perform daily living activities, nor that a prescribed professional has confirmed that, as a result of those restrictions, the Appellant requires significant help to perform daily living activities.

The Panel finds that the information provided by the Appellant's physician in his application for designation as a PWD does not support a designation as a PWD. The ability to work is not one of the criteria for designation. Although the Appellant reports that he has restrictions in performing daily living activities, the legislation requires that a prescribed professional confirm this, and that a prescribed professional confirm that, as a result of his restrictions, an applicant requires significant assistance to perform them. The Appellant's PWD application is silent in this regard.

The Panel concludes that the Ministry's decision was reasonably supported by the evidence under Section 24(1)(a) of the Employment and Assistance Act and confirms the Ministry decision. The Panel unanimously confirms the Ministry decision.

ATTACH EXTRA PAGES IF NECESSARY