

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

1. The Reconsideration Decision Number _____ of July 03, 2008 is the decision under appeal.
2. Citing the relevant legislation, the Reconsideration Officer found that the appellant is not eligible for the designation of Persons with Disabilities (PWD) because the minister was not satisfied that he had a severe physical or mental impairment; that, in the opinion of a prescribed professional, his daily living activities were directly and significantly restricted either continuously or periodically for extended periods by a severe impairment, and that it cannot be determined if he requires the significant help or supervision of another person, the use of an assistive device or the services of an assistance animal.

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).

1. In denying the appellant's request for the PWD designation, the evidence before the ministry at reconsideration was that:
 - a. He was at least 18 years of age;
 - b. His physician had confirmed that his impairment is likely to continue for at least two years;
 - c. His application for the PWD designation and associated documentation described his diagnoses of degenerative disc disease, chronic musculoskeletal back pain, depression, Cauda Equina Syndrome, and neuropathic pain, and that he experiences restrictions of his functional skills including walking, climbing stairs, lifting and sitting with significant cognitive and emotional deficits in the areas of executive, memory, emotion, motivation and impulse control.
 - d. The Assessor Report, also completed by his physician, indicated that while he is independent in four areas of cognitive and emotional functioning, he experiences major impacts in five areas with some impacts in another five areas. He was characterized by his physician as being independent only in areas of paying for purchases, safely storing food, and safely handling and taking his own medications. All other 24 criteria were characterized as requiring the periodic assistance of another person (such as with feeding himself, regulating his diet, doing laundry, shopping, paying rent and bills, making appropriate social decisions and social interactions), requiring consistent assistance (such as with basic housekeeping) and taking significantly longer, or twice as long, than typical to accomplish other activities of daily living (such as in the areas of dressing, grooming, bathing, toileting, shopping, meals and transportation).
2. At the Employment and Assistance Appeal Tribunal hearing on August 21, 2008, the appellant and his advocate presented their evidence that:
 - a. The appellant experiences a severe mental and physical impairment as indicated from the information provided by his physician on his PWD application, specifically identifying major impacts in bodily functions, emotion, attention/concentration, executive skills and motivation with moderate impacts on memory, motor activity and other emotional or mental problems like hostility and depression.
 - b. A letter from his chiropractor dated July 5, 2008 was submitted to the Employment and Assistance Appeal Tribunal office after reconsideration which was accepted as evidence in support of evidence before the reconsideration officer. The letter references relatively poor results from the chiropractor's care, a suggestion of another spinal injury to his neck requiring further investigation, hospital records clearly noting numbing and weakness in both legs, neurologic signs in just one limb coupled with bowel and bladder problems for which surgery may be considered, memory gaps, prior head injuries in the past, the appellant misunderstanding questions the chiropractor put to him, and a

referral to a physician with expertise in brain injuries.

- c. Of the listed criteria on the appellant's PWD application, 16 daily living activities are characterized as taking twice as long or significantly longer than typical by his physician.
- d. He lives with his mother. He reports relying on her continuously for all meal preparation, basic housekeeping and being driven to appointments. His physician has indicated on his PWD application that he requires periodic assistance from his mother and friends on 17 other daily living criteria.

3. The ministry representative presented his evidence that:

- a. The appellant's physician has not confirmed his impairment is severe as the information the physician provided was inconsistent and incomplete. The physician confirmed in the application that the appellant was able to walk, climb stairs, lift, sit and communicate even though he experiences some restrictions. Though the physician identified communication challenges, he later assessed the appellant to have good speaking, reading, writing and hearing. The physician had characterized the appellant's mental or physical impairments as having no impact on consciousness, language, psychotic symptoms or other neuropsychological problems and only minimal impact on impulse control and insight and judgment (both areas which were elsewhere characterized as being significantly impacted).
- b. The physician had assessed the appellant as independent in four areas and though he indicated periodic assistance was required in many areas, the physician had not indicated the duration or frequency of the required assistance.
- c. It could not be determined whether he requires the significant help or supervision of another person.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

1. The issue in this case is the reasonableness of the ministry's decision to deny the appellant's request for the PWD designation
2. EAPWDA Section 2(2) states that the ministry may designate a person a PWD if the ministry is satisfied that they are at least 18 years of age with a severe mental or physical impairment that in the opinion of a medical practitioner:
 - is likely to continue for at least two years,
 - directly and significantly impacts the person's ability to perform daily living activities, and
 - as a result of those restrictions, the person requires help to perform daily living activities.
3. The facts include that the appellant is over 18 years of age, that he is impaired and that his impairment is likely to continue for more than two years.
4. The ministry argues that the appellant and physician have not satisfied the ministry that his mental and physical impairments are severe, that they significantly and directly impact his ability to perform daily living activities and that it cannot be determined if he requires the significant help or supervision of another person.
5. The appellant argues that he, his physician and his chiropractor have confirmed that he has a severe mental and physical impairment which directly and significantly impacts his ability to perform daily living activities and as a result of those restrictions, he requires the help of his mother and friends to perform his daily living activities.
6. The chiropractor's letter of July 5, 2008 was not considered new evidence as it described further detail about the appellant's impairment and was accepted by the panel as evidence in support of evidence before the reconsideration officer.
7. On the evidence before the panel at the hearing, the panel finds that the ministry's decision to deny the appellant the PWD designation was not reasonably supported by the evidence. Notwithstanding some minor inconsistencies and lack of clarity in his physician's report, the physician's and the chiropractor's characterization of the appellant's mental and physical impairments as a whole would reasonably be considered severe both physically and mentally, and that these impairments directly and significantly impact his ability to perform daily living activities. Furthermore, both he and his physician confirm he requires the periodic assistance from his mother and friends for extended periods to perform his daily living activities.
8. The panel therefore unanimously rescinds the ministry's decision.