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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated November 25, 2008, which held that the Appellant does not meet the legislative criteria 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 Ministry found that the Appellant does not have a severe physical or mental impairment, that a prescribed professional has not confirmed that an impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and that a prescribed professional has not confirmed that as a result of direct and significant restrictions, the Appellant requires help to perform daily living activities. The Appellant's application for PWD designation was denied.

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 information before the Ministry at Reconsideration included:

- the Appellant's Persons with Disabilities Designation Application dated August 19, 2008
- the Ministry Adjudicator's worksheet dated September 22, 2008
- a copy of the letter advising the Appellant of the decision dated September 22, 2008
- the Request for Reconsideration dated September 22, 2008

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

No additional evidence was provided by the Appellant.

The Ministry provided evidence that in assessing the Appellant's application it was found that two of the five legislative criteria for designation as a PWD had been met. He is over 18 years of age, and a medical practitioner has confirmed that his impairment is likely to continue for at least 2 years. Based on the information submitted by the Appellant, his impairment is not severe, it does not restrict his ability to perform daily living activities and he does not have a requirement for assistance to perform them.

ATTACH EXTRA PAGES IF NECESSARY

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 criteria for designation as a Person with Disabilities (PWD).

Section 2 of the EAPWDA authorizes the minister to designate a person who has reached the age of 18 years 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 did not provide additional evidence at the hearing.

The Ministry's position is that in assessing the Appellant's application for designation as a PWD, they reasonably concluded that he met only two of the five legislative criteria for designation.

The Panel finds that the information from the Appellant's physician contained in the PWD Application indicates that the Appellant meets two of the five legislative criteria for designation as a PWD. He is over 18 years of age and his physician has confirmed that his impairment is likely to continue for at least 2 years. The Appellant's physician in assessing his mental or physical impairment indicated that the Appellant's ability to communicate is good and that he is independent in mobility and physical ability. With regard to cognitive and emotional functioning, all areas except emotion are listed as having no impact. The Panel finds from this that the Appellant does not have a severe mental or physical impairment. The information indicates that he is independent in performing the majority of activities of daily living and that he does not require help to perform them. The Panel finds that the Ministry's conclusion that the Appellant does not meet the criteria for designation as a PWD is reasonable.

The Panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.

ATTACH EXTRA PAGES IF NECESSARY