

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated March 14 , 2008 denied the Appellant status as a Person with Disabilities (PWD) on the following basis:

- 1) he does not have a severe mental or physical impairment;
- 2) his impairment does not significantly restrict his ability to perform daily living activities;
- 3) it cannot be determined that he requires the significant help or supervision of another person, assistive device or assistance animal 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 (EAPWD) Act , sec 2
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, sec2

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 Appellant is a recipient of income assistance as a person with multiple barriers to employment. He has been diagnosed with multiple fractures both wrists, right shoulder, and right hand. The Panel listened to the oral presentation from the Ministry and read the Appeal Record. The Appeal Record included the following documents:

1. Notice of Appeal dated March 25 2008
2. Reconsideration Decision dated March 14 2008 Extracts of legislation
3. Request for Reconsideration dated February 15 2008
4. Supplemental Medical Opinion Checklist of Daily Living Activities from Dr. (SMOpg1)
5. Supplemental Opinion Dr. page 2 (SMO pg 2)
6. Supplemental Medical Opinion Checklist of Daily Living Activities from RN (SMO pg 1 RN)
7. Supplemental Medical Opinion page 2 RN (SMO pg2 RN)
8. Supplemental Medical Opinion –Help Required (SMOhp)
9. Application for PWD designation dated Dec 03 2007
10. Physician's Report
11. Assessor's Report

The Ministry stated the position that the Appellant met two of the five criteria for a PWD designation, namely age and duration, but did not meet the criteria of severity, restrictions on ability to perform defined daily living activities, and help required.

The Ministry relied on the Physician's Report and Assessor's Report description of the disability and the description of the restrictions on ability to perform daily living activities supported by the Supplemental Medical Opinions. Both the Physician and the Assessor stated the opinion that the Appellant does not have a severe physical or mental disability. Regarding ability to do daily living activities the Physician only noted the Appellant restricted as to mobility inside and outside the house. *In the SMOpg1 RN, the prescribed professional referred to more restrictions, such as cooking , cleaning, laundry, taking medications, and shopping , and other restrictions due to chronic alcoholism. Alcoholism was not a diagnosis that had been included in the application for PWD designation. The ministry concluded that the evidence was not shown to support a determination of more than a moderate disability as the restrictions to daily living activities were not major.*

The Advocate and the Appellant relied on the SMO pg1 RN and the SMOhp to show that the prescribed professional had the opinion that the Appellant was directly and significantly restricted from performing his daily living activities either continuously or periodically for extended periods. The Advocate submitted that the restrictions were to a majority of the daily living activities and because there were so many activities restricted , the restrictions themselves supported a conclusion that the disability was severe.

In response to questions from the Panel the Appellant tried to clarify the daily living activities that he could do and those he could not. He said he could cook , that he had been employed as a cook's assistant many years ago and he could cook meals. He said his home had a laundry room and he could do laundry easily. He said he did the shopping for himself and his sister. She made the grocery list and he took a taxi to the grocery store and the taxi driver put the groceries in the car and took them into the house for him.

For mobility inside the house he could move around but had trouble on the stairs. He could make it up and down the stairs slowly and on cold days when his joints hurt he would have to go up the stairs backwards, rest and then proceed again until he was up the stairs. He said he could do the housework with rests. He said he did not use a walker anymore, although he did use one after his knee operation some years ago.

The Panel finds the following facts based on the evidence:

1. The Appellant lives with his sister who is confined to a wheelchair.
2. The Appellant has pins in his wrist , his knee and right arm from past surgery.
3. The Appellant has pain in his joints , especially on cold days.
4. The Appellant receives regular prescriptions for Tylenol 3 and takes them 4 times a day for pain relief.
5. The Appellant is able to cook, clean, do laundry, go shopping and arrange transportation from taxis and friends.
6. The Appellant is able to make regular medical appointments and can take his pain medication regularly.
7. The Appellant has some help with daily living activities when his relatives come to visit from out of town.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a person with Disabilities as defined in the EAPWD Act.

The Ministry's position is that there are five criteria that must be satisfied to be eligible and the Appellant did not satisfy all of the criteria. He met the first two criteria, namely that he was over 18 years of age and his impairment would last more than two years.

On the third issue of severity the Ministry stated that both of the prescribed professionals gave the Professional opinion that the Appellant was not suffering from a severe mental or physical disability. The Registered Nurse qualified her opinion to state that the physical impairment was moderate not severe.

The Panel found that the evidence of restrictions to daily living activities was contradictory as the doctor did not report many restrictions whereas the registered nurse referred to a majority of restrictions. The corroborating evidence of the Appellant supported the evidence of the Doctor so that a reasonable conclusion would not support a finding on the fourth criteria of significant restrictions to ability to perform daily living activities.

The Appellant's position was that there was evidence of restrictions to the Appellant's ability to perform a majority of daily living activities as defined and that the restrictions led to the conclusion that the physical disability was therefore severe. There was evidence that the Appellant received help from others, specifically family members who came to visit, and that when he was forced to perform certain daily living activities he was slower than an average person.

The EAPWD Act and EAPWDR require that the Appellant must satisfy all five criteria set forth in the legislation in order to qualify for the designation of a person with disabilities as defined in the EAPWD Act. The Panel is not satisfied that there is persuasive evidence that the Appellant has a severe mental or physical impairment. The prescribed professionals both give the professional opinion that the Appellant's impairment is not severe. The Ministry could reasonably rely on the opinion of the Prescribed Professionals in forming its conclusion that the Appellant did not have a severe impairment.

There is contradictory evidence of the Appellant's ability to perform his daily living activities. The Doctor refers to very few restrictions. The Registered Nurse refers to a majority. For clarification the Appellant provides additional information and that evidence appears to show that the Appellant can manage to perform the majority of his daily living activities although in some cases slower than an average healthy person. The Panel found as facts that the Appellant could do many of the specific daily living activities listed in the EAPWDR.

The Panel concluded that the Ministry's Decision was a reasonable application of the applicable enactment in the Appellant's circumstances. The Panel confirmed the Ministry's Reconsideration decision.