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PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated April 15, 2008 which held that the appellant did not meet the legislative criteria for designation as a person with disabilities (PWD) under section 2 of the Employment and Assistance for Persons with Disabilities Act. The Ministry concluded that the appellant does not, in the opinion of a prescribed professional, have a severe mental or physical impairment and that his impairment does not significantly restrict his ability to perform daily living activities, and that he does not require the significant help or supervision of another person to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, 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 the time of reconsideration includes the following

- a) A letter from the appellant citing his reasons for appeal.
- b) A copy of the appellant's Canada Pension Disability application medical report.
- c) A short note from appellant's sister describing the assistance she provides.
- d) The application to the Ministry for designation as a Person with Disabilities.
- e) The Physician's report.
- f) The Assessor's report.

Appellant has chronic lower back pain according to his doctor and will never be able to stand for long hours or lift heavy objects. Appellant's doctor indicates that although some daily living tasks take longer to perform, appellant is independent in most areas. Although angry and depressed at times, appellant's doctor reports little impact to most areas of cognitive and emotional functioning. He has good functioning in immediate and extended social network according to the assessor report.

The severity of his back pain, the appellant states, prevents him from doing any physical work.

Appellant's sister has "on occasion done his shopping as well as his banking, laundry and whatever he's needed as he really is unable to stand around for a long period of time." (letter from appellant's sister dated March 5,2008).

Appellant's doctor completed both the physician and assessor report. Several responses to similar questions vary, but the combined majority of the ability check list in the two reports do not indicate a need for continuous assistance.

The ministry representative opposed the Canada Pension Disability Application Report of April 16,2007 indicating this was new information. The panel finds that this information is admissible under section 22 (4) (b) of the Employment and Assistance Act on the basis that it is generally in support of the information submitted to the ministry and because it was before the ministry at reconsideration and formed part of the appeal record sent to panel members.

The Ministry representative also emphasized some apparent ambiguity between the physician's and assessor's ability check lists even though they were prepared by the same person.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue on appeal is whether the Ministry reasonably concluded that the appellant does not meet the test for persons with disabilities under section 2 of the EAPWD Regulation because his degree of overall limitations and restrictions reported by his physician does not establish a severe mental or physical impairment.

Section 2 of the EAPWD Act sets out the requirements to qualify for PWD designation. The Minister must be satisfied that the person has a severe mental or physical impairment that, in the opinion of a prescribed professional, is likely to continue for at least 2 years and, in the opinion of a health professional, directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities. Section 2 of the EAPWD Regulation defines "daily living activities" in relation to persons who have a severe physical or mental impairment.

The appellant stated that his relentless back pain makes it almost impossible to engage in normal daily living activities in the home and in the community.

The Ministry contends that (1) the assessment from health professionals do not establish the appellant's physical impairment significantly restrict his daily living activities either continuously or periodically for extended periods because his "functional deficits are not severe in terms of overall functionality". (2) the appellant does not meet the help criterion because he does not need continuous assistance to perform daily living activities but rather only periodic assistance. The letter from the appellant's sister also suggest that only occasional help is needed.

The Panel found the Ministry decision was reasonable because the evidence did not conclusively determine that the appellant's degree of physical impairment ,his overall limitations and his restrictions met the test for designation as a Person with Disabilities as set out in Section 2 (2) of the Employment and Assistance for Persons with Disabilities Act. Therefore, the panel found the decision was a reasonable application of the applicable legislation.and thus confirms the Ministry decision.

ATTACH EXTRA PAGES IF NECESSARY