

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 3, 2013, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However the ministry was not satisfied that the appellant has a severe physical or mental impairment or that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLAs, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform his DLAs.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration was:

- A Physician's Report completed by the appellant's physician dated December 20, 2012 in which he diagnoses the appellant with a median neuropathy of the right hand.
- An Assessor's Report completed by the appellant's physician dated December 20, 2012.
- A letter to the appellant from the ministry dated March 5, 2013 reading that he did not meet the eligibility requirements for PWD designation.
- An operative report dated February 22, 2012 detailing an operation on the appellant's wrist and hand. It stated that the surgeon performed "extensive tenolysis median right nerve right wrist along with carpal tunnel decompression" and "microscopic repair median nerve, right forearm."
- A prescription slip dated March 28, 2013 completed by the appellant's physician requesting a copy of the appellant's consultation reports with a different doctor.
- A letter dated March 7, 2013 to the appellant's family physician from his surgeon. The letter states that due to a splint the appellant could not extend his wrist causing disability and that he may not notice any significant neurological recovery for up to a year.
- A letter dated April 25, 2013 written by the appellant's physician stating that his hand injury has caused him to "effectively lose the use of his right hand and this disability will be lifelong."
- The Request for Reconsideration completed by the appellant on April 5, 2013. The appellant writes that he has had difficulty getting the information he requires from his physician. He also requested a ten-day extension to get new information.

At the hearing the appellant submitted new evidence in the form of a letter written by the appellant himself dated May 9, 2013. The letter is a self-assessment and a summary of his argument of why he feels that the ministry's reconsideration decision was unreasonable. In the letter the appellant writes that his hand injury is very painful and he takes pills to manage the pain. He adds that his impairment affects his social life since his pain prevents him from spending time with his friends. He goes on to write that he has difficulty doing up zippers and buttons on his clothes and lifting a laundry basket or moving furniture is difficult due to the limitations and pain of his hand. This letter was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the document is in support of evidence that was before the ministry at the time of the reconsideration. The letter was accepted because it adds details about the appellant's impairment and his assessment of his limitations. At the hearing the ministry had no objections to the letter being accepted as evidence.

In the Physician's Report dated December 20, 2012, the physician states that the appellant's impairment will likely continue for two years or more. He indicates that the appellant can walk 4+ blocks, climb 5+ steps unaided, has no limitation for lifting, has no limitation for being seated, can effectively communicate in English, and has no significant deficits with cognitive or emotional function.

In the Assessor's Report dated December 20, 2012 the physician notes the appellant is independent in all functions of his daily living activities. He also indicates that the appellant is independent in all areas of mobility and physical ability however notes that in the area of communication his writing ability is poor.

At the hearing the appellant told the panel that his impairment does make him disabled. He told the

panel that he is unable to use his right hand for any function. He said that he cannot cut his fingernails on his left hand and that he finds it hard to cook so he eats out for his meals. He added that his physician has told him that his impairment is permanent and that there is no therapy that can improve his impairment. When asked about his surgery he told the panel that he has had no improvement since his surgery but that his surgeon told him that it may take more than a year for him to see a change. The appellant told the panel that he was unhappy with how his physician completed the reports and he thought that the physician did not have the correct information from the surgeon in order to answer the questions accurately. The appellant told the panel that he was present with the physician when he completed the report.

At the hearing the ministry stood by its reconsideration decision and reviewed the details contained in the report. The ministry added that it was likely that the physician did have the details from the surgeon by March 7, 2013 since he received a letter from the surgeon on that date. The ministry noted that the physician likely would have been fully informed of the appellant's impairment when he wrote the letter dated April 25, 2013.

The panel finds that:

1. The appellant has dysenthesia of his right hand.
2. The appellant has significantly reduced use of his hand.
3. The appellant is independent in all areas of mobility.
4. The appellant is independent in all areas of communication except that his ability to write is poor.
5. The appellant is independent in all daily living activities and requires no assistance or assistive devices.
6. The appellant has noticed no improvement in his impairment since his surgery of February 22, 2013

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant's impairment is not severe and that his impairment does not directly and significantly restrict his daily living activities either continuously or periodically for extended periods of time and, as a result of those restrictions, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform his DLAs.

To be considered a person with a disability the legislation requires a person to meet five criteria. These are detailed in EAPWDA Section 2 (2):

- (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that
 - (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
 - (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

The appellant argues that his impairment is severe and it directly and significantly affects his daily living activities either continuously or periodically for extended periods of time.

It is the ministry's position that the appellant meets the age requirement of the legislation and that his impairment is likely to last more than two years. The ministry maintains that his impairment is not severe, he is able to perform his daily living activities independently, and does not require the aid of an assistive device or another person.

With respect to the reasonableness of the ministry's decision that the appellant's impairment is not severe, the panel finds that the physician's report states that the appellant is independent in all areas of physical activity and mobility. There are no written details to clarify or qualify his abilities other than indicating that he is independent. The physician writes that the appellant's ability to walk, sit, climb stairs, lift, and carry are independent. The physician noted that the appellant's writing skills are poor however all other forms of communication are good. The physician indicated that there are no cognitive/emotional deficits and he provides no mental health diagnosis. The evidence supports the ministry's finding that his physical restrictions are not severe and the panel finds that the ministry was reasonable in its finding that the appellant's physical impairments were not severe. The panel finds that the ministry was reasonable in finding that the appellant did not have a severe mental impairment.

With respect to the reasonableness of the ministry's decision that the appellant's impairment does not directly and significantly restrict his ability to perform his daily living activities, the panel finds that the Assessor's Report indicates that the appellant is independent in all functions relating to the daily living activities. There are no notes or written details offering any support for the appellant's position that his daily living activities are restricted. The physician wrote in his letter dated April 25, 2013 that the appellant has effectively lost the use of his right hand however the physician does not add any detail

of how this loss of use will affect the appellant's daily living activities. The panel considered the appellant's written statement about his limitations, however, the legislation requires that the direct and significant restrictions caused by the appellant's impairment be in the opinion of a prescribed professional, as such, the panel could not rely on the letter as evidence of a restriction to his daily living activity. The panel finds that the ministry reasonably found that the evidence does not establish that the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods.

With respect to the reasonableness of the ministry's decision that the appellant does not require the use of an assistive device or the significant help or supervision of another person to perform his daily living activities the panel finds that as the ministry reasonably determined that the appellant's daily living activities are not, in the opinion of a prescribed professional, directly and significantly restricted, therefore, the panel finds the ministry was reasonable to conclude that it cannot be determined that significant help is required from another person.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.