



Persons with Disabilities (PWD)

Appeal Guide

Part One: The Request for Reconsideration

Disability Alliance BC has developed a number of guides to assist advocates and others who may be helping people to obtain benefits from the Ministry of Housing and Social Development (MSDSI or the Ministry). This Guide will provide information and explain how to assist someone who has applied for the Persons with Disabilities (PWD) benefit and been denied.

Anyone who has been turned down for the PWD benefit has the right to appeal. The first stage of the appeal process, called the Request for Reconsideration, is discussed in this Guide. For information on the second stage of the appeal process, please refer to our *Appeal Guide: Persons with Disabilities (PWD) Part Two: The Appeal Tribunal*.

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The information in this Guide is based on the legislation and policy that was current at the time of writing. The legislation and policy are subject to change. Please check the date on this page.

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Persons with Disabilities (PWD) Definition

To qualify for the Persons with Disabilities (PWD) benefit, applicants must meet the following requirements. Please see the appendices of this Guide for the full definition.

Applicants must:

- be at least 18 years of age
- have a severe mental or physical impairment
- have a doctor confirm that the applicant's impairment is likely to continue for at least two years
- have a doctor or health professional confirm that their impairment "directly and significantly restricts" their ability to perform **daily living activities**. The PWD legislation says this restriction must be either "continuous" or "periodic for extended periods"
- show that they need help from a person or from an assistive device to perform daily living activities because of these restrictions

Daily living activities are defined in the Employment and Assistance for Persons with Disabilities legislation as:

- preparing meals
- managing personal finances
- shopping for personal needs
- using personal or public transportation
- keeping the home clean
- moving about indoors and outdoors
- taking care of personal hygiene
- taking medication

For people with mental disabilities, daily living activities also include:

- making decisions about personal care, activities or finances; relating to, communicating with or interacting with people effectively (in other words, getting along with other people)



Applicants do not have to need assistance with all daily activities listed to qualify.



Overview of the Appeal Process

When applicants receive their denial letter from the Ministry, **they** must:

- Contact the Ministry (1-866-866-0800) and ask for a **Request for Reconsideration** form. A sample of this form is included in the appendices of this Guide.
- Complete the Request for Reconsideration form and include all the documents the applicant wants the Ministry to have when it is reconsidering the denial of the benefit.
- Return their Request for Reconsideration form and supporting documents to their local Ministry office within **20 business days** of the date they receive their denial letter.
- An extension may be granted by the Ministry if it is not possible to submit supporting documentation within 20 business days. The Ministry can delay the Reconsideration decision by 10 business days.



20 business days means that you count weekdays, not weekends or holidays. Day 1 is the day after the applicant receives their letter. It is a good idea to write on the top of the denial letter the date the applicant received it.

When MSDSI gets the Request for Reconsideration form, **MSDSI** must:

- Respond, in writing, with its decision within **10 business days** from the date it received the applicant's information.

If MSDSI denies the Reconsideration, the applicant can ask an Appeal Tribunal to hear their case. If they want to appeal to a Tribunal, **they** must:

- Inform the Employment and Assistance Appeal Tribunal (EAAT) office within **7 business days** of receiving the denial letter that they want to go to Tribunal. Applicants do this by completing a form called the Notice of Appeal to the Employment and Assistance Appeal Tribunal. The Notice may be faxed or mailed to the EAAT office. The EAAT office will record the postmark date on the Notice. Often the local Ministry office will agree to fax the Notice to the EAAT office for the applicant.
- Once the Notice of Appeal form has been sent, the Tribunal must be held within **15 business days**, unless the applicant, MSDSI and the Tribunal Chair agree to an extension.



Applying for a Request for Reconsideration

Applicants should act immediately

It is very important that the applicant start work on their Request for Reconsideration right away because they have only 20 business days to get the completed request to the Ministry.

Getting a Request for Reconsideration form

Applicants should call the Ministry (1-866-866-0800) before they go to their Ministry office to pick up the Request for Reconsideration form. That way, a worker will be able to fill out their sections of the form in advance.

When the applicant leaves the Ministry office, they should have the following:

1. The Request for Reconsideration form.
2. A copy of the PWD Medical Report filled out by their doctor.
3. The denial letter from the Ministry that says the Ministry has turned down their application for PWD. They should already have a copy of this letter.
4. Any letters or records the applicant or their doctor may have sent to the Ministry with their PWD application.

Understanding the Request for Reconsideration form

Section One: This should have been completed by a Ministry worker. It includes the applicant's name and current address. It is important to check that this information is correct.

Section Two: This is completed by the Ministry. All the following information should be included:

1. What the Ministry decision is. Usually the Ministry will have provided details on the PWD denial letter.
2. The date the denial letter was received from the Ministry and the date it is due. It is very important that these dates are correct. We recommend writing down the date the Request for Reconsideration is due.
3. The law the Ministry used to make its decision.

Section Three: This is the section applicants complete. They must give the reasons they think the Ministry's decision to deny PWD is unreasonable. Often the Ministry turns down people based on information that is written on the application form by doctors and/or assessors. Or, the Ministry may have turned the applicant down because of information that the doctor and/or assessor left out.

Look at the client's original application and what was said about their medical condition(s) and their ability to perform daily living activities. In the Reconsideration form, the applicant should list the activities they cannot do on their worst days without help. Include activities that they can do, but take much longer to do than most people. See the Daily Living Activities Checklist later in this Guide for help. This information can be attached as a separate page.

Section Four: This is also completed by the applicant. They should sign the form, date it and include their phone number if they have one.



Assisting Clients to Obtain Supporting Documentation

Reconsiderations are usually granted based on supporting medical information included with the Reconsideration Request. An advocate can play an important role in helping a person obtain this information.

Review the file with the client

Sit down with the person and review the PWD application and any other documentation they submitted with the application. Ask the client whether the information on the application is accurate and complete.

Here are some questions you may want to ask:

- Has the doctor described all the client's disabling conditions?
- Has the doctor and/or assessor described all the different ways in which the client's disability restricts their daily functioning?
- Has the doctor and/or assessor confirmed that the client needs ongoing help—or at least noted the consequences of not having enough help?

Often it can be helpful if you ask your client to write down or explain a "day in the life." This account should describe all the ways their disability restricts their ability to perform routine daily living tasks.

Consider the denial letter

The denial letter the client received will highlight the Ministry's reasons for denial and include the adjudicator's explanation as to why the eligibility requirements were not satisfied. Three of the most frequent reasons for denial are:

- The Ministry decided that the person's physical or mental impairment is not severe.
- The Ministry decided that the impairment did not significantly restrict the ability to perform daily living activities.
- The Ministry decided that significant help was not needed with daily living activities.

If a Reconsideration is going to be successful, all the Ministry's reasons for denial must be addressed.

Obtaining medical letters

In PWD cases, medical opinions are important because the reasons for denial are often based on what the doctor or assessor has written, or failed to write, about the applicant's medical condition and how it restricts their daily life.

The advocate can help a client by writing a letter that can be taken to their doctor. This letter should identify the PWD eligibility requirements that are in question and ask the doctor to confirm that the client does indeed meet these requirements. This letter will also ask the doctor to provide details that were not included on the PWD application, for example, the various ways in which the client's disability restricts their daily life.

The advocate can also discuss with the client information from other doctors who were not asked to complete part of the PWD application. This is particularly relevant if the client is seeing a specialist or has seen other doctors since the PWD application was completed. These doctors must be prepared to address the key eligibility issues within the time allowed to file a Reconsideration Request.

Please see a sample doctor's letter on page 10.

Other support letters

In addition to the doctor, other people may be able to provide supporting information that will help the PWD application. A health professional, such as a mental health worker, could describe a client's restrictions in social functioning or a family member may describe help provided by other people. Remember, the Ministry places more value on some kinds of information than others. The opinion of an assessor who is recognized as a prescribed professional has more weight than a friend or family member.



Checklist

When your client is ready to file their Request for Reconsideration with the Ministry, they should have a package that includes:

- A completed Request for Reconsideration form. Make sure the client signs it.
- A letter from the applicant's doctor confirming that they meet the PWD criteria.
- Other supporting information that describes the limitations the person's disability creates.

Photocopy the completed Request for Reconsideration form and all the other documents being provided to the Ministry. The Ministry should date stamp the form when the client takes it in.



Frequently Asked Questions

Q. What if the Ministry does not give the client all the relevant documents?

A. When a client asks for a Request for Reconsideration form, he/she should be given all the information relating to the issue under review, including the PWD application and any other documents the Ministry used to make the eligibility decision. If all this documentation is not given to the client, MSDSI should be contacted immediately so that this information can be made available.

Q. Who makes the Reconsideration decision?

A. The Reconsideration Unit in Victoria adjudicates all PWD reconsiderations. Phone 1-250-356-7993, fax 1-855-771-8784.

Q. Can extra time be granted if the 20 business day deadline to submit the reconsideration request is close?

A. Yes, the Ministry can allow 10 more business days to make their Reconsideration Decision. This means that supporting documentation can be submitted after the 20 business day deadline. In these situations the signed Reconsideration Request form should be submitted to the local MSDSI office or the Reconsideration Unit office before the 20 business day deadline with a clear notation that extra time is needed to submit supporting information. Once the information is obtained, it should be sent to the Ministry immediately. The Reconsideration Unit can be contacted to find out when the final Reconsideration adjudication date has been set.

Q. What if the doctor does not provide the requested information?

A. Often a doctor will fail to provide an adequate support letter because they do not want to take the necessary time. An advocate can help the doctor by identifying the key eligibility issues and suggesting appropriate responses to the doctor. The client can also be encouraged to have a frank discussion with their doctor. In the event that a support letter is not forthcoming, other sources of information may be pursued (and extra time requested, if needed).

Q. When is an impairment “severe” and restrictions “significant”?

A. This question is not easy to answer because there is no definition of these terms in the Act and Regulations. It is helpful if a doctor writes that, in his or her opinion, the client’s impairment is severe and gives reasons why. The more daily living activities that a client is restricted in performing (even if only some of the time), the more likely that the restrictions can be deemed to be significant.

Q. Can the client qualify for PWD if they get no help with daily living activities?

A. Yes, the definition uses the word “require” and many people require help, but do not get it. In these situations, it is important to demonstrate the consequences of not getting help—this can include reduced levels of activity, having to take rest breaks after periods of activity, or taking significantly longer to complete tasks on their own. It should be noted that the Ministry often asks how much longer than normal it takes the applicant to do on their own.

Cover Letter to Doctor

Date

Dear Doctor:

Re: Jane Smith

Ms. Smith recently had her application for disability benefits (PWD) denied by the Ministry of Social Development & Social Innovation. I have advised her that to have the best chance of success with a reconsideration she will need medical letter of support. In order to facilitate this process I have drafted some questions that I hope you will be willing to answer.

Ms. Smith's PWD application was denied because the Ministry decided that there was not enough information to confirm that she has a severe physical and/or mental impairment that significantly restricts her ability to perform daily living activities (DLAs) and thus she does not need ongoing help either. They wanted more details about how and when she is restricted in performing DLAs and the help needed as a result of these restrictions. It should be noted that someone may be deemed to require help if she takes significantly longer than normal to complete daily tasks due to her disability

After talking with Ms. Smith and reviewing her file, I believe that the Ministry may have reached the wrong conclusion. When one assesses the impact of her health conditions on her level of activity, I think she is severely impaired in her overall functioning due to her physical and mental limitations. For example, chronic fatigue, severe back pain, poor balance and low energy limit her ability to do activities such as personal care routines, cooking, cleaning, laundry, shopping, and other tasks outside the home; while recurring depression further limits her ability to do these things as well as social functioning. When she does things on her own, she often take considerably longer than normal to complete routine tasks if she can do them at all (she tells me that it takes her 3 or 4 times longer than normal to get dressed in the morning). She does get some help from friends and family but would probably benefit from more help than she is currently getting – and she now needs to use a cane for balance and mobility. Ms. Smith has written a letter describing her health limitations which I hope you have a chance to read. It is my hope that you discuss this matter with your patient and that sufficient detail can be provided in your response so that it is clear to the Ministry that she has a severe impairment that significantly restricts her ability to perform DLAs so that she needs ongoing help from other people, assistive devices, and/or takes longer to complete tasks on her own.

I would like to thank you for taking the time to consider this request. As the time allowed to file appeals is very short, we need your response as soon as possible. May I suggest that you give the completed letter back to Ms. Smith (regrettably Ms. Smith does not have funds to pay for this letter) Once again, thank you for assisting your patient with this matter.

Sincerely,

Advocate

Questionnaire for Doctor

To Whom It May Concern:

**Re: Jane Smith
Eligibility for the Disability Designation (PWD)**

The following questions are posed to the applicant's doctor in order to assist in determining eligibility for the "persons with disabilities" designation.

1. When the impact of your patient's medical conditions on her daily life are considered, does she have a severe physical or mental impairment (or both)? If so, please explain:

2. Does it take your patient significantly longer than normal to perform daily activities as a direct result of her physical and mental limitations? If so, can you estimate how much longer than normal it typically takes her to do routine tasks?

3. Does she need to take frequent rest breaks during the day? If so, how often?

4. Is her level of activity significantly reduced due to her impairment?

5. How often is she significantly restricted in performing daily living activities by one or more of her medical conditions?

6. Overall, does her impairment significantly restrict her ability to perform a range of daily living activities on a continuous basis, or periodically for extended periods? Please comment and give examples of tasks she has difficulty performing:

7. As a result of her health restrictions, can you confirm that your patient requires significant help with daily living activities - either by taking much longer than typical to complete routine tasks, needing other people for ongoing help, or needing to use an assistive device?

Physician's signature

Date

Office stamp or name and address:

 **Appendices****Definition of “persons with disabilities”/Daily Living Activities**

Following is an excerpt of the section in the *Employment and Assistance for Persons with Disabilities Act* that sets out the criteria for PWD.

2(1) In this section:

“assistive device” means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

“daily living activity” has the prescribed meaning;

“prescribed professional” means a person who is authorized under an enactment to practice the profession of

- (a) a medical practitioner,
- (b) a registered psychologist,
- (c) a registered nurse or registered psychiatric nurse,
- (d) an occupational therapist,
- (e) a physical therapist, or
- (f) a social worker.
- (g) chiropractor
- (h) nurse practitioner

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.

2(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

2(4) The minister may rescind a designation under subsection (2).

Following is Section 2 from the *Employment and Assistance for Persons with Disabilities Regulation* that sets out the criteria of daily living activities.

Daily living activities

2 For the purposes of the Act and this regulation, “daily living activities”,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person’s place of residence in acceptable sanitary condition;
- (vi) perform personal hygiene and self care;
- (vii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.



EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

USE ONLY WHEN ICM NOT AVAILABLE

SECTION 1 and 2 TO BE COMPLETED BY WORKER

SECTION 1 REQUESTOR INFORMATION

REQUESTOR'S NAME	SOCIAL INSURANCE NUMBER	FILE NUMBER
<input type="text"/>	<input type="text"/>	<input type="text"/>
REQUESTOR'S ADDRESS		
<input type="text"/>		
WORKER'S NAME	WORKER NUMBER	EMPLOYMENT AND ASSISTANCE OFFICE
<input type="text"/>	<input type="text"/>	<input type="text"/>

SECTION 2 DECISION TO BE RECONSIDERED

ASSISTANCE / ELIGIBILITY HAS BEEN: DENIED DISCONTINUED REDUCED PWD RESCIND

THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

RELEVANT DATES:	MONTH DECISION EFFECTIVE (YYYY MMM DD)	DATE REQUESTOR INFORMED OF DECISION (YYYY MMM DD)
	<input type="text"/>	<input type="text"/>
		DATE REQUESTOR MUST SUBMIT FORM BY (YYYY MMM DD)
		<input type="text"/>
EMPLOYMENT AND ASSISTANCE WORKER SIGNATURE	DATE (YYYY MMM DD)	
<input type="text"/>	<input type="text"/>	

USE ONLY WHEN ICM NOT AVAILABLE

SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)

SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

REQUESTOR'S SIGNATURE	TELEPHONE	DATE (YYYY MMM DD)
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Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

USE ONLY WHEN ICM NOT AVAILABLE

EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

If you are dissatisfied with a ministry decision, you may request a reconsideration of the decision.

To notify the ministry that you want to have the decision reconsidered you must submit an Employment and Assistance Request for Reconsideration form. Your Employment and Assistance Worker will complete sections 1 and 2 of the form. Section 2 explains what the ministry decision is, states the month it is effective and the legislative authority on which it was based. You must complete sections 3 and 4 and return the form, along with all relevant documents you wish to have considered, to your Employment and Assistance Office within 20 business days of being notified of the ministry decision.

Upon submitting your Request for Reconsideration, a representative of the Reconsideration and Appeals Section will reconsider the ministry decision. The reconsideration decision will be made within 10 business days from the date the ministry receives the completed Request for Reconsideration form, or within 20 business days if an extension is requested and granted. You will be informed in writing of the reconsideration decision.

It is important that you submit all relevant documents relating to your request along with your Request for Reconsideration form in order to ensure that all pertinent information is considered by the Reconsideration and Appeals Section. You are encouraged to attach a written submission with your request. If you need assistance in preparing your submission, you may contact your local Employment and Assistance Centre for a list of local community law offices or community advocacy groups.

The written submission should include:

- the issue (as you see it) that you are asking the Ministry to reconsider.
- any provision of an Act or Regulation you feel is relevant to your request.
- reasons why you think the ministry decision is incorrect.
- copies of any documents supporting your request.

If you are dissatisfied with the outcome of the reconsideration, you may appeal to the Employment and Assistance Appeal Tribunal.

The ministry decision stands until a final decision is made. If the ministry decision is to reduce or discontinue your assistance, you may be eligible to receive a reconsideration/appeal supplement during the reconsideration/appeal. However, you must agree in writing to repay the amount if the final decision does not approve your request. If the final decision approves your request, you do not have to repay the reconsideration/appeal supplement.

Pursuant to subsection 22(4) of the *Employment and Assistance Act*, a tribunal panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision being appealed was made, and**
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).**

CONSEQUENTLY, IT IS IMPORTANT THAT YOU SUBMIT ALL RELEVANT INFORMATION WITH YOUR REQUEST FOR RECONSIDERATION.