

PWD eligibility criteria: Judicial Review sets standards

In *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, the Supreme Court of BC made several findings with respect to the eligibility criteria for designation as a person with disabilities (PWD) under the *Employment and Assistance for Persons with Disabilities* legislation. The decision in *Hudson* is found at <http://www.courts.gov.bc.ca/jdb-txt/SC/09/14/2009BCSC1461.htm>

The Court held that:

- a) The ordinary meaning of the plural "activities" dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities. There is no statutory requirement that more than two daily living activities be restricted.

[See para. 43 of *Hudson*]

- b) An application is sufficient if:

- i. Either the medical practitioner or the assessor confirms that a person's severe impairment directly and significantly restricts their ability to perform daily living activities. There is no statutory requirement for confirmation from both;

or

- ii. The medical practitioner and the assessor's evidence, when read together, confirm that a person has a severe impairment that directly and significantly restricts their ability to perform daily living activities. There is no statutory basis for reading Parts 2 and 3 of the PWD application discretely.

[See paras. 43-46 & 63 of *Hudson*]

- c) The evidence of the physician and assessor must be read in their entirety and in a broad way. Even if the physician or assessor does not tick a specific box on the PWD application form, his or her evidence must be reviewed in full, including narrative portions, to see if eligibility confirmation can be found elsewhere.

[See paras. 3-7, 41 & 51-54 of *Hudson*]

- d) Significant weight must be placed on the evidence of the applicant, unless there is a legitimate reason not to do so.

[See paras. 64-65 of *Hudson*]

- e) Any ambiguity in the interpretation of the *Employment and Assistance for Persons with Disabilities* legislation must be resolved in favour of the applicant.

[See paras. 35 & 62-63 of *Hudson*]

- f) The *Employment and Assistance for Persons with Disabilities* legislation must be interpreted with a benevolent purpose in mind.

[See para. 62 of *Hudson*]

As the superior court in British Columbia, the Supreme Court's decision in *Hudson* is **binding** on the Health Assistance Branch, reconsideration adjudicators, and the Employment and Assistance Appeal Tribunal in making any decision as to whether an applicant meets the definition of "person with disabilities" in the *Employment and Assistance for Persons with Disabilities* legislation.