

**PART C – Decision under Appeal**

On January 8, 2012 the Ministry decided that the Appellant was ineligible for the Persons with Disabilities (PWD) designation as the Appellant does not meet all of the criteria set out in sections 2(2) and (3) of the EAPWDA. Specifically the Ministry was not satisfied that the Appellant has a severe physical or mental impairment; that the Appellant's prescribed professional does not confirm that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, that the Appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, he requires help to perform daily living activities.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 2 (2) and (3).  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 2.

## PART E – Summary of Facts

The evidence before the Ministry on Reconsideration included the following:

- The PWD Designation Application which consisted of a Self Report (SR) dated October 5, 2011; a Physician's Report (PR) dated October 5, 2011; and an Assessor's Report (AR) completed by the Appellant's Physician and dated October 5, 2011.
- A letter from the Appellant's mother to the Appellant's Physician dated June 23, 2011.
- Patient Medical Expense Report, 4 pages, printed on October 3, 2011
- Appellant's handwritten submission entitled Restricted Daily Activities, attached to Request for Reconsideration dated December 16, 2011.
- Submission prepared by the Appellant; 2 pages; dated December 15, 2011.
- Submission prepared by the Appellant's legal advocate; 2 pages; dated December 15, 2011.
- Copy of Hudson v. British Columbia (EAAT) 2009 BCSC 1461

In the SR the Appellant describes his history of medical problems and attached hospital records as follows:

- His physical complaints include: severe pain, joint stiffness, chronic headaches, sleep disturbances, chronic pancreatitis, type 1 diabetes, asthma, allergies, arthritis in neck, scoliosis, neuropathic disorder, abdominal pain, nausea, dizziness. 80% of the time he feels sick and 100% of the time he is in pain.
- All of his physical conditions along with mental and emotional issues significantly restrict his daily activities:
  - Getting in and out of bed can sometimes take hours.
  - He wakes early to take medications before he has to get up.
  - His personal hygiene has declined: clipping toenails, washing hair and shaving are sometimes impossible due to pain and stiffness.
  - Putting on socks, shoes or anything that requires bending is sometimes impossible
  - Stair climbing is restricted and due to severe pain a railing is necessary.
  - Standing or sitting is painful after 20 minutes
- His mother who lives in another city comes to help sometimes.
- He uses a rolling computer chair to get around his house.
- He often asks friends or family for assistance.
- He uses a railing for stairs.

In the PR the Appellant's Physician reports the following:

- The diagnoses related to the Appellant's impairment are as follows:
  - Low back pain – chronic – DDDx [degenerative disc disease]
  - Neck pain – chronic – DDDx and arthritis
  - Chronic pancreatitis
  - Asthma
  - Depression
- The Appellant's Physician describes the severity of these medical conditions:
  - "Severe back and neck pain with significantly restricted activities of daily living. Chronic

- pancreatitis with abdominal pain and reported digestive problems after meals”
- The anticipated duration of medication and treatments is “progressive permanent condition”
- The Appellant’s Physician says that a bathroom grab bar is required for support.
- The Appellant’s Physician describes the degree and course of impairment as likely to continue for two years or more and states: “His back and neck conditions (degenerative disc disease and chronic pain) is permanent and progressive.”
- He describes the Appellant’s Functional Skills as follows:
  - Walking unaided – unknown
  - Stair climbing unaided – unknown
  - Limitations in lifting – 5 – 15 lbs
  - Remain seated – 1 – 2 hours
  - Significant deficits with cognitive and emotional function include memory, emotional disturbance, motivation, and attention and sustained concentration. He comments “chronic pain and depression with decreased motivation and concentration.”
- He adds an additional comment:
  - “Patient’s daily living activities are severely restricted (reviewed calendar of activities provided) with frequent episodes of incapacitating pain resulting in 2 – 3 times longer to complete the same task.”

In the AR the Appellant’s Physician provides the following information:

- The physical and mental impairments that impact the Appellant’s daily living activities are arthritis, degenerative disc disease in his neck and back; and pancreatitis causing severe digestive problems and abdominal pain.
- Mobility and Physical Ability require assistance as follows:
  - Walking indoors, walking outdoors, climbing stairs and standing all take 3 times longer than typical. Lifting, carrying and holding all require frequent assistance from family and friends.
- 8 of 14 items of cognitive and emotional functioning impact daily functioning. The Appellant’s Physician’s comment states: “Severe chronic pain and depression – emotional lability, decreased concentration, significantly disrupted sleep. Chronic pancreatitis with digestive and chronic bowel problems.”
- 13 of 26 aspects of daily living activities are reported to be independent. Two were not applicable. The 13 aspects of daily living activities with which the Appellant needs assistance or takes significantly longer are dressing, grooming, bathing, toileting, transfers in/out of bed, transfers in/out of chair, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking and getting in and out of a vehicle.
- The Appellant’s Physician commented “Frequent episodes of incapacitating pain @ 30% of the time requiring assistance with ADL’s”
- The Appellant has marginal functioning with his immediate social network due to chronic pain.
- The Appellant has marginal functioning with his extended social network due to chronic pain and depression – social aversion.
- The Appellant receives help with daily living activities from his mother and his friends.
- The Appellant requires grab bars in the bathroom and shower.
- The Appellant’s Physician adds an additional comment:
  - “Patient has a chronic progressive condition that is frequently incapacitating requiring

assistance to perform activities of daily living and with meal preparation, housekeeping, shopping, lifting, carrying and holding."

The letter from the Appellant's mother details the following help that she provides to her son:

- She has cared for [Appellant] since his hospitalization in 2009.
- She travels from another city "at a moment's notice" to care for him when he is bedridden with "crippling pain" for three to four days at a time.
- She prepares meals, does housework, shops for groceries and takes him to appointments when he is in too much pain to drive.

On appeal the Appellant submitted the following additional evidence which was not objected to by the Ministry:

- A letter from his Physician dated January 18, 2012. The letter stated: *[Appellant] is a patient at this clinic and under my medical care for chronic pain that significantly affects his ability to function. I am of the opinion that he meets the disability criteria for significant disability and have indicated this repeatedly in his disability application but surprisingly he has been turned down each time. I appreciate his level of frustration and I am also somewhat befuddled as to why he keeps being denied. I feel that I have very clearly established within this form that he is "significantly disabled" and very much resent the fact that I am being wrongfully quoted as the reason for you denying his claim.*
- Consult report from a Specialist to the Appellant's Physician dated November 19, 2010 re chronic pain and degenerative disc disease, 3 pages
- List of medications, August 19, 2011 – February 2, 2012, 5 pages.
- Imaging Consult Reports dated October 15, 2010, 2 pages.
- Three letters describing help given to Appellant from friends dated February 2, 2012, 3 pages.

This evidence was accepted as evidence in support of the information and records that were before the Ministry on Reconsideration pursuant to section 22(4) of the EAA.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for the Persons with Disabilities designation on the grounds that he does not meet all of the criteria set out in sections 2(2) and (3) of the EAPWDA. Specifically the Ministry was not satisfied that the Appellant has a severe physical or mental impairment; that the Appellant's prescribed professional does not confirm that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, that the Appellant's prescribed professional does not confirm that as a result of direct and significant restrictions, he requires help to perform daily living activities.

The EAPWDA, s. 2 sets out 5 criteria which must be met for PWD designation:

1. The Appellant must have reached the age of 18;
2. The Minister must be satisfied that the person has a severe mental or physical impairment;
3. In the opinion of a medical practitioner, the impairment will continue for at least 2 years;
4. In the opinion of a prescribed professional, the impairment must directly and significantly restrict the persons' ability to perform daily living activities, either continuously or periodically for extended periods; and
5. As a result of the restriction in activities, the person requires help to perform those activities. "Help" is defined in s. 2(3)(b) of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

"Daily Living Activities" are defined in the EAPWDR, section 2:

**2 (1) 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) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) 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.

The Appellant argues that the evidence in the PWD application which is supported by the additional documents and by his oral evidence on appeal shows that he suffers from a severe physical impairment in the form of degenerative disc disease which causes severe pain. The Appellant says he has pain 100% of the time and several times a month he will have days when he cannot even get out of bed. On these occasions his mother travels to his home to help him. In addition to the pain from the degenerative disc disease he has chronic pancreatitis which is also a painful condition. The Appellant states that his physician confirms the severe and sometimes incapacitating pain he experiences. The Appellant argues that his doctor confirms that his daily living activities are significantly restricted and that he currently receives help from his mother, from friends, and by using aids such as stair railings and a rolling computer chair in his house. He argues that he would use more help if he could get it. His physician recommends grab bars in his bathroom and shower.

The Ministry argues that his impairments are not severe; do not significantly restrict his daily living activities and do not require significant help or supervision from another person. The Ministry argues that severe pain is not a severe impairment. The Ministry argues that the Appellant's Physician has not submitted documentation as to the treatments or tests that have been attempted to resolve or minimize the impairment. The Ministry takes issue with the sufficiency of the Appellant's Physician's report as he does not identify the assistive device the Appellant uses to lift, carry and hold; says he is unaware how far the Appellant can walk unaided but says it takes 3 times longer than typical to walk indoors, outdoors, stand and climb stairs; does not explain how the Appellant manages when assistance is not readily available; and, does not say where in the range of 5 – 15 lbs the Appellant can lift.

The legislation requires the Ministry to be satisfied that the Appellant's impairment is severe. In deciding whether the Ministry's decision was reasonable the evidence of the Appellant's Physician and the Appellant can be considered. The Appellant's Physician describes a permanent, chronic and progressive condition of degenerative disc disease which causes severe chronic pain that is frequently incapacitating. The EAPWDA does not define impairment but the PWD application uses this definition on page 8 "Specify diagnoses related to the Applicant's impairment using the diagnostic codes below. 'Impairment' is a loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." According to this form the impairment is not the degenerative disc disease itself. This panel finds the impairment is the severe chronic pain which is an abnormality of physiological functioning which causes a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration. The Appellant's Physician reports "Severe back and neck pain with significantly restricted activities of daily living"; "Patients daily living activities are severely restricted (reviewed calendar of activities provided) with frequent episodes of incapacitating pain resulting in 2 – 3 times longer to complete the same task."; "Frequent episodes of incapacitating pain @ 30% of the time requiring assistance with ADL's"; "Patient has a chronic progressive condition that is frequently incapacitating requiring assistance to perform activities of daily living and with meal preparation, housekeeping, shopping, lifting, carrying and holding." These descriptive comments are supported by the Appellant's Physician's specific reports of 13 of 26 aspects of daily living activities either requiring periodic assistance or taking 2 – 3 times longer than typical. These 13 aspects of daily living activities are all those requiring physical activity. The Appellant's evidence in the SR and on appeal is consistent with his physician's

evidence. In addition the Appellant's ability to perform daily living activities is further affected by significant deficits with cognitive and emotional function. This panel finds it was not reasonable for the Ministry to decide that the Appellant does not have a severe physical impairment.

The Appellant's Physician's evidence reports how his impairment of severe chronic pain restricts his ability to perform daily living activities. Of the 26 applicable aspects of daily living activities the Appellant is independent only in those items not involving physical activity – feeding self, regulating diet, reading prices and labels, making appropriate choices (shopping), paying for purchases, meal planning, safe storage of food, banking, budgeting, pay rent and bills, filling/refilling prescriptions, taking as directed, and safe handling and storage (medications). All of the 13 aspects of daily living activities that require physical effort are restricted. Periodic assistance is required for grooming, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, and cooking. The Appellant takes 2 – 3 times longer to perform dressing, grooming, bathing, toileting, transfers in/out of bed, transfers on/off of chair, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking and getting in and out of a vehicle. The legislation does not require the prescribed professional to submit documentation as to what treatments or tests have been attempted to resolve or minimize the impairment and it was not reasonable for the Ministry to rely on the absence of that information. The Appellant's Physician checked boxes that say the Appellant uses assistive devices for lifting, holding and carrying instead of checking the boxes for periodic assistance from another person but explained below that the assistance is from family and friends. It was not reasonable for the Ministry to rely on the wrong box being checked when the physician's evidence was clear. Neither the legislation nor the PWD application requires the Appellant's Physician to explain how the Appellant manages when assistance is not available. Neither the legislation nor the PWD application require the Appellant's Physician to describe where in the range of 5 – 15 lbs the Appellant can lift. The question of how far the Appellant can walk unaided is not the same as the estimate that walking takes three times longer than typical and the way the Appellant's Physician answered those questions does not undermine his evidence overall. The Appellant's Physician's evidence is supported by the Appellant's evidence as to the effect of chronic severe pain on his daily living activities. The legislation requires the opinion of a prescribed professional, such as the Appellant's Physician, that the Appellant's daily living activities are directly and significantly affected by his impairment in order for the Ministry to be satisfied. As set out above the Appellant's Physician clearly is of the opinion that the Appellant's daily living activities are directly and significantly restricted. It was not reasonable for the Ministry to decide otherwise.

The legislation also requires the opinion of a prescribed professional that the Appellant requires help as a result of the restrictions to daily living activities. Help can be in the form of an assistive device, the significant help or supervision of another person or a service animal. The Appellant's Physician recommends grab bars in his bathroom and shower and notes that he receives frequent assistance from his mother and friends for those aspects of daily living that are restricted.

The panel finds that it was not reasonable for the Ministry to decide that he does not require help as a result of the restrictions to his daily living activities.

The additional evidence submitted by the Appellant at the hearing supports the condition of degenerative disc disease and associated pain and the medications the Appellant takes.

APPEAL #

The panel finds that the Ministry's decision that the Appellant was not eligible for the Persons with Disabilities designation was not reasonably supported by the evidence and the Ministry's decision is rescinded. Therefore the Ministry's decision is overturned in favour of the Appellant.