

PART C – Decision under Appeal

The decision being appealed is the Ministry's January 13, 2012 reconsideration decision denying the Appellant Persons with Disabilities (PWD) designation. The Ministry determined that the Appellant did not meet all of the required criteria for PWD designation set out in EAPWDA section 2(2). Specifically the Ministry determined that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods: and,
- (ii) as a result of those restrictions he requires help to perform those activities.

The Ministry did determine that the Appellant satisfied the other criteria, that: he has reached 18 years of age; and, in the opinion of a medical practitioner his impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2.

PART E – Summary of Facts

An observer with the Appellant's advocate attended the hearing with the Appellant's consent. However, that observer did not participate in the hearing.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's August 31, 2011 PWD application.
2. A physician's report (PR) and an assessor's report (AR) both completed by the same doctor on August 31, 2011 who indicated that he has known the Appellant for 6 years and has seen him 11 or more times in the year preceding these reports.
3. Appellant's request for reconsideration dated November 14, 2011, together with a letter dated November 16, 2011 from the Appellant's advocate to the doctor who completed the PR and AR, a supplemental medical opinion from that doctor dated November 30, 2011, an open heart surgery screen for the Appellant in December 2011, and a letter from a hospital to the Appellant regarding its cardiac surgery program together with an illustration with the Appellant's diagnostic summary dated December 5, 2011.

In the PR the doctor described the Appellant's diagnoses as chest pain (not yet diagnosed) onset in July 2011, shortness of breath with exertion, and generalized anxiety onset in July 2003. The doctor indicated that the Appellant can walk 1-2 blocks unaided on a flat surface, climb 5+ steps unaided, lift under 2 kg and had no limitations remaining seated. The doctor also noted that the Appellant had significant deficits with cognitive and emotional function, specifically with emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration. Regarding restrictions to the Appellant's daily living activities, the doctor noted the following: no restrictions to personal self care, to meal preparation, to management of medication, to mobility inside the home, to use of transportation or to management of finances; and, continuous restrictions to basic housework, daily shopping, mobility outside the home, and social functioning. For social functioning the doctor wrote "anxiety, irritability" and for assistance with daily living activities the doctor wrote "assistance from friends".

In the AR the doctor described the same diagnoses and added depression. The doctor indicated that the Appellant is independent in all aspects of mobility and physical ability, but added "unable to sustain" for walking outdoors and climbing stairs. The doctor also wrote chest pain and shortness of breath with walking more than 1 block and climbing more than 10 steps. The doctor noted the following impacts to cognitive and emotional functioning: no impact to concentration, executive, memory, language, psychotic symptoms or other neuropsychological problems; moderate impact to insight and judgment, attention/concentration, memory and motor activity; and, major impact to bodily functions, emotion, impulse control, and other emotional or mental problems. The doctor added this comment "poor social interactions".

For assistance required with daily living activities, the doctor indicated that the Appellant is independent in all aspects of personal care, meals, paying rent and bills, medications and transportation. The Appellant is independent with laundry but needs periodic assistance with basic housekeeping. With respect to shopping, he is also independent reading prices and labels, making appropriate choices and paying for purchases, but requires periodic assistance with going to and from stores and with carrying purchases home. The doctor added "chest pain with exertion". Regarding impacts from the Appellant's mental impairment the doctor indicated that the Appellant

needs period assistance with the following aspects of social functioning: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and being able to deal appropriately with unexpected demands. The Appellant is independent in securing assistance from others. The doctor also noted that the Appellant has very disrupted functioning in his relationships with his immediate and extended social networks.

In her November 16, 2011 letter to the Appellant's doctor, the Appellant's advocate reviewed the information the doctor provided in the PR and AR, the PWD eligibility criteria and then summarized the reasons for the Ministry's original denial of the Appellant's PWD application. She asked the doctor to complete a supplemental medical opinion form included with her letter.

The doctor completed that form by checking boxes, answering yes or no to questions and adding comments. The doctor noted "yes" to the question whether the Appellant's impairment is likely to continue for more than two years. In response to the question whether in the doctor's medical opinion the Appellant is able to perform the listed daily living activities the doctor checked only "manage personal medication" and added "unable to take medications as prescribed, poor impulse control". The doctor did not check off the other listed daily living activities; that is, prepare own meals, shop for personal needs, use of public or person transportation, perform housework, and move about indoors and outdoors. In the list relating to severe mental impairment the doctor checked "relate to, communicate or interact with others" and added "difficulty with interpersonal communication". The doctor did not check "make decisions about personal activities, care, or finances". The doctor also indicated "yes" to the question if in his professional opinion these daily living activities are directly and significantly restricted and added "difficulty in social situations, anxiety, anger issues, irritable." For the activities noted as restricted the doctor circled "continuously restricted" and also wrote "unable to manage his own medications due to impulse control". The doctor also answered "yes" to the question whether in his professional opinion the Appellant requires help with his daily living activities as a result of his severe restrictions and also wrote "previously was getting partner to administer his medications". The doctor indicated that help is required 4-5 times a week. In response to the question whether in his professional opinion the Appellant has a severe physical and/or mental impairment the doctor answered "yes" and wrote "severe PTSD and generalized anxiety".

At the hearing the Appellant's advocate reviewed the Appellant's diagnoses described in the original PWD application, pointed out that the additional diagnoses of "angina and ongoing smoker with hypertension" in the December 5, 2011 diagnostic summary, and listed all of the medications that the Appellant currently takes. The advocate also reviewed all of the information in the PR, the AR and the supplemental medical opinion related to the Appellant's impairments and the daily living activities the doctor noted as being restricted.

The advocate next addressed the Ministry's reconsideration decision starting with the Ministry's review of the Appellant's impairments. The advocate pointed out that the Ministry stated that "as you recently underwent cardiac surgery (message to MSD on December 22nd) it is hopeful that your physical condition has improved and your anxiety level as well". The Appellant stated that his bypass surgery is scheduled for February 21, 2012, so the advocate submitted that the Ministry did not have the facts right. Also there is no evidence that the Appellant's anxiety is related to his heart condition, the chest pains being diagnosed well after the anxiety. In another part of the decision the Ministry wrote that "as cardiac surgery is imminent, the likelihood of improvement in physical

condition is probable". The advocate disagreed with these conclusions and argued that the Ministry relied too much on the surgery and its personal opinions about the effects of the surgery. The advocate submitted that the Appellant's surgery should improve his physical symptoms and prolong his life, but will not get rid of the PTSD or his mental conditions.

The advocate also submitted that the Appellant needs help with his daily living activities as his doctor indicated. The advocate referred to the PWD criteria and the definition of daily living activities in the legislation, and she argued that the legislation does not state that a majority of daily living activities have to be restricted. The advocate submitted that the Appellant is severely restricted in 7 out of the 10 activities listed in the regulations, and in the supplemental medical opinion the doctor indicated that the Appellant is continuously restricted and needs help 4-5 times a week. The Appellant said that he now administers his medications himself, or tries to. Sometimes it is difficult for him when he gets really stressed out and self-implodes. He stated that his friends help him on weekends by driving him to the grocery store and cleaning up his apartment.

The Panel finds that the information about the Appellant's medications, the Appellant's testimony about his upcoming surgery, about administering his own medications and the help he gets from his friends all relate to information about the Appellant's medical conditions and his ability to manage daily living activities that the Ministry had when it made its reconsideration decision. Therefore the Panel admits all this testimony as being in support of the evidence that was before the Ministry at the time of reconsideration pursuant to section 22(4) of the Employment and Assistance Act. The Panel also finds that the other submissions from the Appellant's advocate are oral argument and accepts them as such.

At the hearing the Ministry acknowledged that when it made its reconsideration decision the Ministry had information that Appellant was going to have heart surgery not that he did have it. The Ministry then reviewed the reconsideration decision, including the information that the Ministry cited, its reasoning. The Ministry reaffirmed that decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is not eligible for PWD designation because he did not meet all the requirements in section 2(2) of the EAPWDA, and specifically that: he does not have a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, that in the opinion of a prescribed professional, as a result of the restrictions, he does not require significant help to perform those activities. The Ministry determined that he met the 2 other criteria in EAPWDA section 2(2).

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:

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.

(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.

The daily living activities referred to in section 2(2)(b) of the EAPWDA are defined in the following sections of the EAPWDR:

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 Panel will consider each party's position regarding the reasonableness of the Ministry's reconsideration decision under the applicable PWD criteria at issue in this appeal.

Severe Impairments

In its review of the information about the Appellant's physical impairment, the Ministry referred to the doctor's reports about the Appellant's physical functioning, about the Appellant's chest pain and shortness of breath, and also the doctor's report that the Appellant is independent in all aspects of mobility and physical abilities, except for chest pain and shortness of breath when walking more than 1 block and climbing more than 10 steps. The Ministry also wrote that as cardiac surgery is imminent the likelihood of improvement in physical condition is probable. Based on this information the Ministry determined that the Appellant's functional skill limitations were more in keeping with a moderate degree of impairment and appeared to be related to cardiac disease for which the Appellant would be

having surgery. For these reasons the Ministry was not satisfied that the information provided evidence of a severe physical impairment.

The Appellant submitted that the doctor's reports confirm that he had a severe physical impairment because of his medical conditions and because of his limitations with walking, climbing, stairs and lifting as well as his need for periodic assistance with daily living activities such as basic housekeeping, going to and from stores and carry purchases home. The Appellant also pointed to the doctor's added comments about chest pain and shortness of breath when physically mobile, and chest pain with exertion when doing basic housework, going to and from stores and carrying purchases home. As for the Appellant's upcoming surgery his position is that it may improve his physical symptoms and prolong his life, but it will not get rid of his PTSD or his mental conditions.

The Panel will first address the issues raised by the Appellant about the Ministry's statements about the effects from or hoped for effects from the Appellant's surgery. The Panel finds that there is no evidence that the Appellant's medical conditions will improve after he has surgery. Therefore the Panel finds that these statements by the Ministry were not reasonably supported by the evidence. The Panel also finds that there is no evidence, specifically medical evidence, that the Appellant's anxiety is related to his cardiac conditions. In the August 2011 PR the doctor indicated that the Appellant was diagnosed with general anxiety in 2003 and chest pain in July 2011. Therefore the Panel finds that the Ministry's opinion that if the Appellant's physical condition improved that consequently his level of anxiety would as well was not reasonably supported by the evidence.

With respect to the Appellant's physical impairments, the Panel notes that in the PR and the AR the doctor described the Appellant as having shortness of breath and chest pain. In the PR the doctor indicated that the Appellant can walk unaided 1-2 blocks, climb 5+ steps, and lift under 2 kg. The doctor also indicated that basic housework, daily shopping and mobility outside the home were continuously restricted, but provided no additional comments. Then in the AR the doctor indicated that the Appellant is independent in all aspects of mobility and physical ability, specifically walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding. For walking outdoors and climbing stairs the doctor added that the Appellant is unable to sustain, and has chest pain and shortness of breath when walking more than 1 block and climbing more than 10 steps. The Appellant also has chest pain with exertion when doing basic housework and physical aspects of shopping, and he needs periodic assistance with these. However, the doctor noted no physical impairments with other physical aspects of daily living activities such as getting in and out of vehicles or personal care. The Panel also notes that the doctor did not describe any physical impairments or limitations in the supplemental medical information. Therefore based on all of the information provided the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

The Ministry also determined that the information provided did not establish a severe mental impairment. The Ministry noted that the doctor reported that generalized anxiety caused significant deficits to the Appellant's cognitive and emotional functioning, as well as continuous restrictions to social functioning described as anxiety, irritability, and also moderate to major impacts on daily functioning due to poor social interactions. The Ministry determined that the doctor's narrative did not support a severe mental health condition that significantly limits the Appellant's ability to function either continuously or periodically for extended periods. The Ministry reviewed the additional

information from the doctor submitted with the request for reconsideration noting that it did not include any information regarding the Appellant's physical dysfunction or related restrictions to daily living activities. In that report the doctor indicated an additional diagnosis of PTSD (post traumatic stress disorder), that the Appellant is unable to take prescribed medications due to poor impulse control, and has difficulty with interpersonal communications and social situations due to anxiety, anger issues and irritability. The Ministry wrote that it considered this new information but determined that it did not demonstrate a severe mental impairment that significantly restricted the Appellant's ability to perform daily living activities continuously or periodically for extended periods. The Ministry noted that the Appellant's partner previously administered his medications and the Appellant may need assistance taking medications; however, the Ministry determined that the Appellant is able to make decisions about personal activities, care and finances. Also the Ministry wrote that social functioning requires only periodic support/supervision with no description provided of the degree or duration of such support.

In support of his position that the evidence establishes a severe mental impairment the Appellant referred to all 3 of the doctor's reports, including the diagnoses in the PR, the AR and the supplemental medical information. The Appellant pointed out that the doctor indicated significant deficits in 5 aspects of cognitive and emotional function, as well as continuous restrictions to social functioning because of anxiety, anger issues and irritability, difficulty with interpersonal communications and very disrupted functioning in the Appellant's social networks. The doctor also added that the Appellant has difficulty with interpersonal communications and in social situations, anxiety, anger issues and irritable.

The Panel notes that in his 3 reports the doctor described the Appellant's mental health conditions as generalized anxiety, in the AR he added depression and in the supplemental opinion he added severe PTSD. In the PR the doctor indicated that the Appellant had significant deficits with 5 aspects of cognitive and emotional function, as well as continuous restrictions to social functioning. In the AR the doctor indicated that the Appellant's mental impairment had a major impact on bodily function, emotion and other neuropsychological problems, plus a moderate impact on insight, attention/concentration, motivation and motor activity with the comment poor social interactions. Additionally the doctor assessed the Appellant as needing periodic assistance with all aspects of social functioning except the ability to secure assistance, and as having very disrupted functioning in his relationships with his immediate and extended social networks. In his supplemental medical opinion the doctor wrote that the Appellant has difficulty with interpersonal communications, is unable to take medications as prescribed due to impulse control and has difficulty in social situations, anxiety, anger issues and is irritable. The Panel finds that when all of this evidence is considered it was not reasonable for the Ministry to determine that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities

In its reconsideration the Ministry wrote that the doctor reported continuous restrictions to basic housekeeping, daily shopping, mobility outside the home and social functioning, with restrictions to the latter described as anxiety, irritability. The Ministry determined that the doctor reported that the majority of daily living activities (25 out of 28) are performed independently or require only periodic help. For those activities requiring periodic help, the Ministry found there was no indication from the doctor about the frequency or duration of assistance needed. The Ministry noted that periodic

support/supervision was reported in 4 of the 5 aspects of social functioning but with no description of the degree and duration of support/supervision required from other people. The Ministry concluded that because the majority of daily living activities are performed independently or require little help from others, the information from the prescribed professional did not establish that the Appellant's impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Appellant argued that the applicable legislation does not state that a majority of daily living activities have to be restricted to meet the PWD criteria. The Appellant further submitted that the reports indicate that he is directly and severely restricted in 7 out of the 10 listed activities. Also in the supplemental medical opinion the doctor indicated that the Appellant is continuously restricted and needs help 4-5 times a week. Therefore the Appellant's position is that this requirement has been met.

The Panel notes that there are some differences in the doctor's reports about the Appellant's restrictions in managing daily living activities. First in the PR the doctor reported that the Appellant is continuously restricted in his ability to perform basic housework, daily shopping, mobility outside the home and in social functioning. The doctor provided no additional comments except to add anxiety, irritability for social functioning. In the AR the doctor reported that the Appellant is independent in all aspects of daily living activities, except he needs periodic assistance with basic housekeeping, going to and from stores, carrying purchases home and social functioning. The doctor provided no additional comments about the extent of assistance required or how the Appellant's impairments impact the ability to manage each of those activities, only adding chest pain with exertion. In the supplemental medical opinion the doctor indicated a severe restriction to managing personal medication and also to relating to, communicating and interacting with others. The doctor indicated these are continuously restricted and added that the Appellant is unable to manage medications on his own due to impulse control. In this report the doctor did not check the boxes for shopping, performing housework or moving about indoors and outdoors, activities he noted as restricted in the other reports. The Panel finds that although the doctor reported that certain activities are continuously restricted and certain aspects of these activities require periodic assistance, he provided no other information or details about the restrictions, except for restrictions with managing medications. Therefore based on all of the evidence from the prescribed professional, the doctor in this case, the Panel finds that the Ministry reasonably determined that the Appellant's impairment does not significantly restrict his daily living activities either continuously or periodically for extended periods.

Assistance with Daily Living Activities

Because the Ministry concluded that the Appellant's daily living activities are not significantly restricted, it therefore determined that the Appellant did not require significant help or supervision from another person. Also no assistive devices are required.

The Appellant submitted that in the PR the doctor wrote that the Appellant needs assistance from friends and in the AR the doctor also indicated that assistance is provided from friends. In the supplemental opinion the doctor reported that the Appellant is unable to manage his own medication, was previously getting his partner to administer his medications and the Appellant needs help 4-5 times a week.

The Panel finds that, although in the PR and the AR, the doctor indicated that the Appellant needs and gets assistance from friends, the doctor did not provide any information about what type of help he gets, or the frequency or the extent of any help the Appellant needs or receives. In these reports the doctor indicated no assistive device is used nor is an assistance animal used. Also in the supplemental report the doctor only indicated that the Appellant needs help with managing his medications 4-5 times a week, which is only one daily living activity. Therefore the Panel finds that the Ministry reasonably determined based on the evidence that the Appellant did not meet the criteria in section 2(2)(b)(ii) of the EAPWDA.

The Panel finds, based on all of the evidence, that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.