

PART C – Decision under Appeal

The decision being appealed is the Ministry's January 27, 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

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's August 29, 2011 PWD application.
2. Physician's Report (PR) completed on August 26, 2011 by a physician who indicated that the Appellant has been her patient for more than 3 years and she has seen the Appellant between 2-10 times in the 12 months preceding these reports.
3. Assessor's Report (AR) completed by the same physician on August 19, 2011 with attachments described below.
4. Letter dated November 18, 2011 from the Appellant's doctor to the Ministry and the federal government clarifying that the Appellant's previous employment was as a machinist and not labourer or construction worker.
5. Supplemental medical opinion dated December 9, 2011 signed by another doctor.
6. Appellant's January 11, 2012 request for reconsideration with a statement from him.

In his PWD application the Appellant referred to a previous application and indicated that in addition to the problems described in that form, he has a heart problem. He had an angiogram and now has a stent in his heart. The Appellant also wrote that an MRI study of his left shoulder was done on January 9, 2011, but no steps had been undertaken to correct that. The Appellant submitted that not enough attention was given to what the doctor thinks is a sciatic problem with his lower back which could be treated with physiotherapy, but he did not receive funds for the physiotherapy. He indicated that he had a CT lumbar spine report dated January 10, 2011 which should have been sent to the Ministry. He believed he would get help from surgeons once his heart could tolerate treatments for both his shoulder and lower back. The Appellant also wrote that another doctor would do some scopes of his digestive tracks, that the doctors work slowly, physiotherapy was not available and the heart problem delayed everything else.

The physician, in the PR, described the Appellant's diagnoses as rotator cuff syndrome and sided sciatica. She referred to an MRI of the Appellant's left shoulder dated January 9, 2011 and a CT lumbar spine report dated January 10, 2011. The doctor wrote that she referred the Appellant to an orthopedic surgeon for an opinion regarding the left shoulder. The doctor also indicated that the Appellant needs to attend rehab-physiotherapy, does not have the funds to do so and added "anti-inflammatory medications for pain". Regarding the Appellant's functional skills, the doctor indicated that the Appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 2 to 7 kgs and can remain seated 1-2 hours. The doctor also noted no significant deficits to cognitive and emotional function and no direct restrictions to daily living activities from the Appellant's impairments. In this report the doctor added that the Appellant is unable to work as a labourer/construction due to pain from his lower back, left leg and left shoulder. The doctor recommended physiotherapy which the Appellant had been unable to afford and he needs to attend physiotherapy or have an adequate trial of rehab before she could deem him permanently disabled.

In the AR the same doctor wrote that the Appellant has "no limitations in managing daily activities". She noted that he is independent walking indoors, climbing stairs and standing, and uses a cane on rough ground when walking outdoors. The doctor indicated that lifting, and carrying and holding take significantly longer, adding that the Appellant can lift a maximum of 10 lbs and can only carry 10 lbs. She also wrote that the Appellant has 'pain in his left shoulder, lower back and left leg/foot with carrying/lifting 10 lbs" and also he "can only tolerate sitting for under 2 hours and walking less than 1

km". The doctor indicated "n/a" for impairments to the Appellant's cognitive and emotional functioning and she also indicated that the Appellant is independent in all aspects of daily living activities: that is, personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. She also noted "n/a" for aspects of social functioning. The doctor wrote that the Appellant "currently is independent with all activities of daily living" and that he uses a cane on uneven ground. She added that the Appellant has debilitating pain in his lower back radiating to his left foot and left shoulder, he is unable to afford physiotherapy and he has a new diagnosis of coronary artery disease which was treated with angioplasty.

The doctor referred to two attachments in her PR and AR. The first is an invoice for 2 MRIs but with no other details. The second is a July 28, 2011 letter the doctor wrote to the Ministry and to the federal government requesting funding for physiotherapy costs. In that letter she indicated that the Appellant suffers from lower back pain, left side sciatica pain and left shoulder pain, and he is finding all those sources of pain disabling. The Appellant reported that he can sit/stand/bend for up to 1-2 hours before resting due to pain. An MRI of his left shoulder revealed small supraspinatus rotator cuff tears and a CT of his lumbar spine in January 2011 demonstrated degenerative disc disease with no evidence of a problem amenable to surgery. The doctor stated that the Appellant requires a trial of physiotherapy to improve his pain and regain his strength, but the Appellant reported that because he cannot afford physiotherapy he has remained untreated for at least 2 years. The doctor also wrote that she did not think the Appellant was permanently disabled from his musculoskeletal problems. She thought that he would recover to the point of being able to participate in some form of employment. She also wrote that she did not feel she could deem him disabled unless he first tried a rehabilitation program. In this letter the doctor listed the Appellant's problems as: coronary artery disease July 19, 2011, back pain, rotator cuff syndrome and GERD. She also listed his medications.

In the statement accompanying his request for reconsideration, the Appellant wrote that the information in a supplemental medical opinion dated December 9, 2011 was valuable to his case and he asked the Ministry to consider it in its reconsideration. The Appellant also stated that he was working on a small book with up to date information including medical reports, using the doctor's July 18, 2011 letter as a base. He also indicated that physiotherapy had been made financially possible since then, but without success. The Appellant wrote that his condition is not reversible as the doctor first informed the Ministry. It only helps him tolerate what he has to put up with.

In the supplemental medical opinion, in response to the question whether there are restrictions to daily living activities from severe impairments, the doctor noted only moving about indoors and outdoors adding that the Appellant has limited exercise tolerance and can walk a maximum of 3 blocks. That doctor also indicated that the Appellant's ability to perform daily living activities is not directly and significantly restricted, adding that he is limited in his exercise tolerance otherwise he is able to do daily living activities. She also noted that the Appellant does not need help to perform daily living activities. In response to the question whether the Appellant has a severe physical impairment, the doctor indicated yes and added "chronic back pain". She also wrote that the Appellant suffers from chronic mechanical back pain which he has daily and this will be problematic for him doing some activities; e.g., sitting for prolonged periods of time or walking for more than 3 blocks, but he should be able to do his daily living activities.

At the hearing the Appellant submitted that the Ministry could not have made a fair decision because

it did not have enough information from the doctors. He said the doctors' work is not completed; it is slow and not fully informed. He also described his medical conditions as lower back pain, a heart problem and GERD. He said the GERD is a difficult medical condition and the doctors cannot work on it because of his heart condition and the risk of excess bleeding. The Appellant said he can move around by himself but slowly, he drives but it is hard to get into his car, he can't do anything with his left arm, he can't lift more than 10 lbs., and walking is hard. He can't walk far and he can't sit for long without pain. However, he also did not dispute the doctor's reports in the PR and AR about his ability to manage daily living activities.

The Panel finds that the Appellant's testimony is related to information about the severity of his medical conditions and managing daily living activities which the Ministry had when it made its reconsideration decision. Therefore the Panel admits the testimony as being in support of the evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

The Appellant also submitted a book of documents he compiled consisting of medical reports and doctors' letters about his heart condition, GERD and lumbar spine problems, his shoulder, the MRIs and CT scans he had, as well as copies of his doctor's July 28, 2011 letter and the December 9, 2011 supplemental medical opinion described above. These reports confirmed information about the Appellant's medical conditions already in the PR, the AR and the December 2011 supplemental medical opinion. The Appellant had written comments on these documents. The Ministry did not object to the admission of these documents.

The Panel finds that the information in these documents is related to information about the Appellant's medical conditions and treatments which the Ministry had when it made its reconsideration decision and therefore the Panel admits them as being in support of the evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry reviewed the information it considered in its reconsideration decision, specifically the doctor's reports in the PR and the AR, as well as the supplemental medical opinion. The Ministry noted that the doctors reported no limitations with managing daily living activities and that the Appellant did not require assistance with those activities. The Ministry submitted that the information it had did not establish that the PWD criteria were met.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is ineligible 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) as set out below.

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 EAPWDA section 2(2)(b) 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 reconsideration decision the Ministry indicated that it reviewed the Appellant's self-report, the PR and the AR. The Ministry noted the extent of the Appellant's physical functioning as reported in the PR, as well as the information in the supplemental medical opinion which noted the Appellant's limited exercise tolerance, his ability to walk a maximum of three blocks and his chronic pain which was problematic for his ability to do some activities such as sitting for prolonged periods or walking more than 3 blocks. Based on its review of the information, the Ministry determined that the Appellant did not have a severe physical impairment.

The Ministry also noted that the physician indicated no significant deficits with cognitive and emotional functioning, and also no impacts or mental diagnosis regarding cognitive and emotional functioning. Therefore based on this assessment the Ministry was not satisfied that the Appellant has a severe mental impairment.

The Appellant's position is that the doctors' work is not complete and the Ministry did not have all the information about his medical conditions or their severity. He described the pain in his shoulder, leg and foot and the physical limitations he experiences, including not being able to use his left arm, being unable to sit for long, being unable to walk far and having difficulty getting in the car. However, he did not dispute the doctors' reports that he is able to manage his daily living activities. Also the Appellant provided no evidence of a mental impairment nor did he dispute the doctor's reports regarding his cognitive and emotional functioning.

The Panel notes that the Appellant described the pain in his left shoulder, sciatic problems and lower back pain, his heart condition and GERD. The Appellant also described physical impairments because of these conditions including the inability to use his left arm, being unable to lift more than 10 lbs or sit for long, being unable to walk far and having difficulty getting in his car. However, he also said that he can move around although slowly and he provided no information about any assistance he needs or gets with daily activities. The Appellant's doctor indicated that the Appellant has debilitating pain in his lower back radiating to his left foot and shoulder so that he can lift a maximum of 10 lbs, tolerate sitting for less than 2 hours and walk less than 1 km using a cane on rough ground. However, the Panel also notes that the doctor reported that the Appellant is independent walking indoors, walking outdoors, and standing and the doctor also reported that the Appellant has no limitations in managing daily activities. The other doctor reported that the Appellant has chronic back pain which will be problematic for doing some activities such as sitting for prolonged periods or walking for more than 3 blocks; however, that doctor also stated that the Appellant should be able to do daily living activities. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

Regarding any mental impairments, the Panel finds that there is no evidence from the Appellant or the doctors about any mental health conditions or mental impairments. Also the Appellant's doctor reported no impairments to cognitive and emotional functioning. Therefore the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities

In its reconsideration decision the Ministry indicated that it reviewed the PR and the AR, as well as the supplemental medical opinion. It noted that the physician reported that the Appellant takes significantly longer to lift, carry and hold items because of pain in his left shoulder, lower back and left leg/foot. The Ministry also noted that the Appellant's doctor indicated that all of the Appellant's daily living activities are independent, that there is no indication that the Appellant takes significantly longer to perform them, and that he is also independent in 5 aspects of social function. The second doctor reported that the Appellant is able to do his daily living activities. Therefore based on these doctors' reports the Ministry was not satisfied that the information demonstrated that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

The Appellant submitted that his physical impairments, particularly his pain, limit him in his activities. He described his inability to use his left arm, how walking takes longer, how he cannot sit for long and how getting into a car is difficult. However he did not dispute the doctors' reports that he is able to manage daily living activities.

The Panel finds that the Ministry considered the evidence from the Appellant's doctor in both the PR and the AR, as well as the second doctor's opinion in the supplemental opinion all of which indicated that the Appellant is independent in all aspects of daily living activities. The Panel also notes that both doctors, the prescribed professionals in this case, wrote that the Appellant is able to manage his daily living activities. Therefore the Panel finds that, based on the evidence, the Ministry reasonably determined that in the opinion of the prescribed professionals the Appellant does not have a severe impairment that directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

Assistance with Daily Living Activities

The Ministry noted that the Appellant's doctor indicated that he needed a cane when walking on rough ground; however, the second doctor indicated that the Appellant does not require assistance to perform his daily living activities. Because it concluded that the Appellant's daily living activities are not significantly restricted by a severe physical or mental impairment the Ministry determined that the Appellant did not require significant help or supervision from another person.

The Appellant provided no information or submissions about any help he needs or receives with daily living activities.

The Panel finds that the only evidence about any assistance needed by the Appellant is the doctor's note about using a cane when walking on rough ground. Also the Appellant's doctor reported that the Appellant is independent in all aspects of daily living activities and the second doctor indicated that the Appellant did not need assistance with such activities. Therefore the Panel finds that the Ministry reasonably determined that the information did not establish that the Appellant satisfied the requirements in section 2(2)(a)(ii) of the EAPWDA.

The Panel find, based on the whole 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.