

PART C – Decision under Appeal

The decision being appealed is the Ministry's February 29, 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 Employment and Assistance for Persons with Disabilities Act 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 has reached 18 years of age and that 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 October 16, 2011 PWD application.
2. Physician's Report (PR) and Assessor's Report (AR) both dated December 1, 2011 and both completed by the same doctor who indicated he attended to the Appellant during his admission to hospital. That doctor also noted that the Appellant did not have a regular physician.
3. Appellant's request for reconsideration together with medical reports about the Appellant's conditions from doctors in another province, his hospital discharge instruction sheet from October 2011, letters from two friends, photos of his heels and general information sheets about ulcers.

In his PWD application the Appellant wrote that he does not know all the proper names of his disabilities but they affect his ability to walk even short distances, his strength is no greater than a 10 year old, his disabilities come and go and he has no feeling from his knees down making it hard to walk (stumbles a lot). The Appellant stated that his hands cramp up like arthritis making it difficult to handle smaller items. Some days he uses a coat hanger to do up zippers because of that weakness. He also has to take short breaks even with brushing his teeth. The Appellant also wrote that his hands and arms stiffen up and every day things are three times harder than what they used to be.

The Appellant indicated that he gets bouts of diarrhea 5 out of 7 days, lasting for sometimes up to 14 hours with ten minute breaks every hour. The Appellant wrote that the doctor indicated this may get better with insulin and a proper diet which he is working on. He also has a tough time getting in and out of vehicles. His joints don't bend like they used to, it's hard to lift his legs and he has to swing them. Sometimes he has to use both hands to unlock doors and it is difficult to grip things. The Appellant stated that it used to take him 15 minutes to get ready for the day but now it takes him 45 minutes to over an hour. It is frustrating to go from being unstoppable to being like a 90 year old man. He wrote that he was strong like a bull but now is weak like a bunny.

In the PR the doctor described the Appellant's diagnoses as insulin dependent diabetes and peripheral neuropathy. The doctor further described the Appellant's conditions as "poorly controlled insulin dependent diabetes with autonomic dysfunction of the bowel resulting in frequent movements with signs of peripheral neuropathy and pain in the legs related to his diabetes." For functional skills the doctor indicated that the Appellant can walk unaided on a flat surface for 1-2 blocks, climb 5+ stairs unaided, lift 5-15lbs and has no limitation with remaining seated. The doctor also indicated that there are no significant deficits with the Appellant's cognitive and emotional function. In the PR the doctor added that the Appellant had moved to the province recently and was admitted to the hospital with uncontrolled diabetes. The duration and previous control of the Appellant's condition was not known to the doctor and the Appellant does not have a regular physician.

The same doctor, in the AR, indicated that the Appellant is independent walking indoors and outdoors, and standing. The Appellant takes significantly longer climbing stairs, lifting, and carrying and holding. The doctor added that the Appellant finds it difficult to lift more than 15 lbs and to climb more than 10 stairs due to muscle weakness and pain. The doctor also indicated "n/a" – not applicable regarding all aspects of cognitive and emotional functioning. As for daily living activities, the doctor noted that the Appellant is independent in all aspects of personal care, meals, paying rent and bills, medications, transportation and social functioning. The Appellant is also independent in all aspects of shopping (going to and from stores, reading prices and labels, making appropriate

choices, paying for purchase) except for carrying purchases home for which the Appellant requires continuous assistance. The doctor also indicated that the Appellant needs periodic assistance with laundry and basic housekeeping, but the doctor provided no other details. The Appellant has good functioning in his immediate social network and no information was provided about his functioning in his extended social network. The doctor indicated that the Appellant gets help with daily living activities from family and friends, but provided no details about the frequency or extent of any help provided. Also the doctor did not note the use of any assistive devices and indicated no assistance is provided by assistance animals. The doctor added that the Appellant has not been assessed by an occupational therapist for daily living activities and in the hospital he managed these but at home the Appellant is reliant on family and friends for strenuous tasks.

In his request for reconsideration the Appellant wrote that he feels that he has physical disabilities in his daily living. He wrote that he may not need help in daily activities all the time but he can't work anywhere or do anything with the chronic diarrhea. It makes him nauseous and dizzy and he has been told he will have this condition for life. He wrote that this works on his pride and he is not sure how or where his next dollar is coming from or who he can turn to. He also wrote that he needs help with his physical disabilities and he included letters from friends who have witnessed his disabilities.

The first letter was from a friend who wrote that she has known the Appellant since 2005 when he was in good health and she noticed his health going downhill slowly over the years. She described the Appellant as having no control over his bowel whether he is awake or sleeping and his body goes into random tremors when he feels like he is going to pass out. The Appellant calls her because he is scared to drive in this state. She also wrote that recently when the Appellant was cleaning he complained about his foot being very sore and he noticed numerous sores on his legs, hands and body which make it difficult for him to walk and do everyday things. She stated that the Appellant ended up in the emergency room with a bad infection and then went to the hospital every eight hours for antibiotics to fight the infection.

The second letter submitted is from another friend who indicated she has know the Appellant since 2006 and since then she noticed things have gotten worse for the Appellant. She stated that he can hardly walk to a vehicle without a few wobbly steps and his legs get wobbly so he can't stand. She wrote that the Appellant gets cramps in the lower part of his legs and he can hardly get into a vehicle because he has no strength to pull himself in. He had a lot more strength then he does now.

The other medical information submitted by the Appellant consists of a letter dated October 11, 2009 from a doctor who evaluated the Appellant for cardiac status, test reports from 2009 and the Appellant's hospital discharge instruction sheet from October 2011. In the 2009 letter the doctor indicated that the Appellant has a history of type 2 diabetes for 8 years, of not using any medications and he is an extremely high risk for vascular disease. That doctor also wrote that the Appellant clearly is a severe vasculopath with severe COPD and has features of diabetic neuropathy.

The Panel finds that the medical information in the 2009 letter is not as recent as the information from the doctor in the PR and the AR. Therefore the Panel gives the medical information in the PR and the AR more weight, although the Panel does note that both doctors described some of the same medical conditions; namely, diabetes and diabetic neuropathy.

At the hearing the Appellant described his medical conditions and how they affect his daily life. He also stated that in his opinion he does need and use assistive devices. When he goes for groceries he needs to use a shopping cart because he needs something to lean on. He also uses the steering wheel to get in and out of the car because his legs are very weak. The Appellant stated that the diabetes is closing off veins in his lower legs and he has to watch every step. He can't walk 10-20 feet without resting. The Appellant said he has pain in his legs, from the knees down and he can't feel below his knees. One time he burned his ankles because he was unable to feel the heat from a space heater. The Appellant stated that he uses a coat hanger to do up zippers and buttons because his hands are too weak. He has to lean on things, like kitchen counters, to keep from falling and dropping things. The Appellant also said that he can still get out and about.

The Panel finds that the Appellant's testimony relates to information about his impairments which the Ministry had when it made its reconsideration decision. Therefore the Panel admits that testimony as being in support of the information that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry reviewed the legislative requirements for PWD designation and the information from the doctor who completed the PR and the AR. The Ministry submitted that the doctor indicated that the Appellant was independent in most daily living activities and overall the information provided was not enough to support a PWD designation.

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 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) 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 Impairment

In its reconsideration decision the Ministry indicated that it reviewed the Appellant's self-reports and acknowledged that the Appellant has certain limitations as a result of his conditions. The Ministry also reviewed the information provided by the doctor who completed the PR and the AR, including the information about the Appellant's physical functioning and mobility. The Ministry noted that the doctor indicated that the Appellant is independent walking indoors and outdoors, and standing. The doctor also indicated that it takes the Appellant significantly longer to climb stairs, to lift, and to carry and hold. The doctor indicated difficulty with lifting more than 15 lbs and with climbing more than 10 steps due to muscle weakness and pain. However, the Ministry noted that the doctor did not indicate how much longer these activities take and did not report the use of any aids or devices to help compensate for the impairments. Therefore the Ministry determined that the information provided did not establish a severe physical impairment.

The Appellant submitted that he does have a severe impairment. His medical conditions severely weakened his legs, affecting his ability to stand, to walk and to get in and out of cars. He uses a cart to go shopping and has to lean on counters when standing. His hands are also weak so that he has to use hangers to do up zippers. The Appellant also submitted that frequent diarrhea impacts his ability to function day and night.

The Panel finds that the Ministry considered the Appellant's self reports and all of the information provided by the doctor in the PR and the AR, including restrictions to lifting, carrying and holding, and climbing stairs. The evidence from the Appellant and the doctor does indicate that the Appellant has physical restrictions; however, the doctor also noted that the Appellant is independent in mobility and physical activity. Also the Appellant said he can still get out and about. Therefore the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

In terms of a mental impairment the Ministry noted that the Appellant's doctor did not diagnose any mental health impairment. That doctor also indicated no significant deficits with the Appellant's cognitive and emotional functioning and also indicated no impacts from impairments on his cognitive and emotional functioning.

The Appellant provided no evidence of and made no submissions about any mental impairment.

The Panel finds that there is no evidence of a mental impairment and therefore the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities

The Ministry referred to the information from the doctor who completed the AR and who indicated that the Appellant can independently manage the majority of his daily living activities. The Ministry noted that the doctor indicated that the Appellant requires periodic assistance with basic housekeeping but provided no narrative about the frequency and duration of this assistance. The Ministry also noted that the Appellant requires continuous assistance with carrying purchases home, but this is only of out of 28 areas of daily living activities considered.

The Appellant submitted that he receives help from family and friends with daily living activities. He also argued that he uses devices to assist him with different tasks.

Section 2(2)(b) of the EAPWDA requires the opinion of a prescribed professional to satisfy the requirements in section 2(2)(b)(i) and (ii). In this case the Ministry did consider the evidence from the prescribed professional; that is, the doctor who completed the PR and the AR. As the Ministry noted that doctor reported that the Appellant is independent in all aspects of daily living activities except for needing periodic assistance with laundry and basic housekeeping and continuous assistance with carrying purchases home. The doctor, however, provided no details about the frequency or extent of any periodic assistance the Appellant needs. Therefore the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant does not have a severe mental or physical 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 doctor indicated that the Appellant does not require any assistive devices, or any equipment to help compensate for his impairments. He also does not require the services of an assistance animal. In addition because the Ministry concluded that the Appellant's daily living activities are not significantly restricted by a severe mental or physical impairment, it determined that the Appellant did not require significant help from other persons.

The Appellant argued that he does receive help from friends and family, and he does use assistive devices.

The Panel finds that the Ministry reviewed the doctor's reports which indicated no need for any assistive aids or an assistance animal. Although the doctor reported that the Appellant receives help from friends and family, the doctor did not describe the type or the extent of any help the Appellant receives. Also the Ministry reasonably concluded that the Appellant did not require significant help from other persons because his daily living activities are not significantly restricted by a severe impairment. Therefore the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant did not meet the requirements of section 2(2)(a)(ii) of the EAPWDA.

The Panel finds that, based on the whole of the evidence, 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.