

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 11, 2012 which found that the appellant did not meet two of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years, and the ministry was also satisfied that the evidence establishes that the appellant has a severe physical or mental impairment. However, the ministry was not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information stamped received June 15, 2012, physician report dated April 12, 2012, and assessor report dated April 12, 2012;
- 2) Letter dated April 23, 2012 from the ministry to the appellant confirming receipt of the appellant's PWD Application, stating it was not signed by him, and requesting that he sign the application and return it to the ministry;
- 3) Undated note from appellant's physician stating in part that the appellant was recently found to have a large brain tumor; although this brain tumor does not cause any significant neurological symptoms, it causes him extreme stress; he feels depressed and unable to concentrate;
- 4) Report dated May 23, 2012 regarding the appellant's tumor stating in part that it is benign, slow growing, that it can grow and cause symptoms (walking problems, facial numbness, diplopia, swallow problems), may have minimal symptoms since his brain/nerves have been able to compensate but will reach the limit in terms of compensating and get more symptoms, can get big enough to be life threatening; best treatment is surgery to remove as much as possible followed by radiation or since relatively asymptomatic, and better hearing is on the left side, might be reasonable to watch on scans for a bit;
- 5) Letter dated May 28, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 6) Request for Reconsideration- Reasons.

At the hearing, the appellant provided a two additional documents as follows:

- 1) Letter dated July 5, 2012 from a specialist in cranial base and vascular micro-neurosurgery to the appellant providing an appointment for the appellant on December 10, 2012 so that the specialist can review the MRI scan with the appellant; and,
- 2) Outpatient Laboratory Requisition in the appellant's name dated October 17, 2012.

The ministry did not object to admission of these documents. The panel reviewed the new documents and admitted them, pursuant to Section 22(4) of the Employment and Assistance Act, as relating to the appellant's diagnosed brain tumour and being in support of the information before the ministry on reconsideration.

At the hearing, the appellant, with the assistance of his friend acting as an interpreter, stated that when the PWD application was completed he was doing well, but he is currently having many more problems. The appellant stated that the letter from the specialist's office and the Requisition show that he is still undergoing tests for his brain tumour. The appellant stated that the original self-report was completed by his friend on his behalf. The appellant stated that there are many things he cannot do because of his brain tumour, that he gets double vision and cannot see very well. The appellant stated that he also has sleeping problems and that he gets diarrhea and is constantly going to the washroom. The appellant stated that he has a hearing aid but he still cannot hear very well, that when there are too many people and it is noisy it hurts his ear so he does not wear his hearing aid very often. The appellant stated that he cannot cook all the time and he often goes to a community service to get meals. The appellant stated that he cannot walk too much because he gets tired very easily and needs to rest. The appellant also stated that he does not think that well because of the pressure caused by his brain tumour. In response to a question, the appellant stated that he has not started treatment for his brain tumour yet because more tests need to be conducted and that the specialist is reluctant to remove the tumour because of the appellant's age and his heart condition which make surgery risky. The appellant stated that he currently lives alone in a senior's facility where home care workers are available but the appellant has not yet applied for a home care worker because he is "not that bad yet". The appellant stated that he has known his family physician for 27 years, that he completed the reports in the PWD application and that he speaks the appellant's language. The appellant stated that the specialist, however, does not speak his language.

In his self-report, the appellant adds that he has diabetes, Ischemic heart disease, hypertension and deafness and sometimes he cannot hear clearly what other people are saying. With aging, the condition of his ear and

hearing is getting worse. The appellant states that with his heart problem he cannot do any extreme exercise or quick movement, he can only walk slowly, and he has to carry prescribed medicine all the time.

The physician who completed the physician report has confirmed that the appellant has been his patient since 1989 and that he has seen the appellant 2 to 10 times within the last 12 months. In the physician report, the physician describes the appellant's health history as including progressive bilateral deafness since 1989, which became very severe in the past few years and the appellant cannot catch conversation, hearing aid does not help and "...because of his profound hearing impairment he has been unable to find employment- he can't do a proper interview or can't follow instructions." The physician states that the appellant's diabetes and Ischemic heart symptoms are not that severe, a recent MRI scan of his brain (investigation for his tinnitus and deafness) shows a large brain tumour and he is scheduled to see a neurosurgeon.

In the assessor report, the physician indicates that the appellant lives alone and is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chairs. The physician indicates that the appellant is independent with laundry and with basic housekeeping. The physician reports that the appellant is independent with all tasks of shopping with no further information provided. Further, the physician reports that the appellant is independent with all tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food. The physician indicates that the appellant is independent with all tasks of paying rent and bills, and managing medications and transportation with no further comments. In terms of social functioning, the physician has indicated that this section of the report is "N/A", or not applicable. The physician indicates that the section of the report detailing assistance provided by other people is also not applicable and that the appellant uses an assistive device in the form of a hearing aid.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(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.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

### Definitions for Act

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 ministry's position is that although the appellant meets three of the criteria as set out in the legislation, in that he has reached the age of 18, his impairments are likely, in the opinion of a medical practitioner, to continue for at least 2 years, and he has a severe physical or mental impairment, the evidence does not establish that he has met the two remaining criteria. In particular, the ministry argues that the evidence does not show that the prescribed professional confirms that the appellant's severe physical and mental impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods so that he requires the significant help or supervision of another person, the use of an assistive device or the services of an assistance animal to perform these activities.

The appellant argues that the current evidence establishes that the appellant's severe physical or mental impairment directly and significantly restricts his ability to perform many DLA, for which he requires the significant help and supervision of another person.

Regarding the appellant's ability to manage daily living activities (DLA), the panel has relied on the evidence of the physician provided in the PWD application. Although the appellant provided oral evidence at the hearing regarding the impact of his impairment on his DLA, this information has not been confirmed in the opinion of a prescribed professional, as required by the legislation. In terms of preparing his own meals, the physician indicates in the assessor report that the appellant is independent with all tasks. Although the appellant stated that he cannot cook all the time and often gets meals from a community service, the physician has not confirmed a restriction or need for assistance in this DLA. For managing personal finances, the physician indicates in the assessor report that the appellant is independent with all tasks of paying rent and bills. In terms of shopping for his personal needs, the appellant's physician has reported in the assessor report that the appellant is independent with all tasks of shopping.

For use of public or personal transportation facilities, in the PWD application, the physician reports that the appellant is independent in all tasks, with no further notes provided. For performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicates that the appellant is independent with both laundry and with basic housekeeping. For mobility inside and outside the home, the appellant's physician reports that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing. With respect to performing personal hygiene and self care, the physician indicates in the PWD application that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, and transfers in/out of bed and on/off of chair. The physician reports that the appellant is not restricted with managing his personal medications and there is no need for assistance. For making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively, the physician indicates that the section of the report assessing social functioning is not applicable but indicates that the appellant has poor hearing ("severe deafness") with respect to his ability to communicate.

Looking at the evidence of the prescribed professional, the panel finds that it demonstrates that the appellant is independent in all areas of DLA. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i)

of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician that the appellant lives alone, that assistance is not required from other people and that the appellant uses a hearing aid . As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.