

### PART C – Decision under Appeal

In a reconsideration decision dated 01 June 2012, the Ministry denied the Appellant a Person with Disabilities (PWD) designation because it concluded he did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that his impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because they determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, that the impairment in the opinion of a prescribed professional did not directly and significantly restrict his ability to perform daily living activities (dla) either continuously or periodically for extended periods and that he did not require an assistive device or significant help or supervision of another person to perform his 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 included:

- a PWD designation application,
- 2 pages of diagnostic records from another province dated February 11, 2010,
- a medical assessment letter from a neurosurgeon in another province dated June 2, 2011, recommending no surgical intervention and continued physiotherapy for the Appellant.

In the notice of Appeal the Appellant states he disagrees with the decision because when he is hurting he cannot work and day to day tasks are impossible without help until the pain subsides. He continues that he cannot work without taking high doses of medications “which his arthritis doctor says is killing me”.

In the Request for Reconsideration, the Appellant states he cannot work without his arthritis or back flaring up and it disables him to the point of not being able to do anything except taking his medications and waiting for pain relief. He continues that his arthritis doctor says the high dose of medications he takes is killing him and his general practitioner (GP) is weaning him off his prescribed painkillers. He concludes that the medications are the only ones that relieve his pain and he cannot work without either of the medications.

In the Appellant’s section of the PWD application, the Appellant states his disability is arthritis that attacks his hands, elbows, shoulders, knees, ankles and feet which stops him from doing almost anything until the pain and stiffness subsides. He says that his back is also very vulnerable to hard work, bending and lifting. He states when he used to stress his back that his recovery time would be a week or two, now it is months. He notes he waited in another province a year and a half for back surgery and in the end the neurosurgeon did not recommend surgery. He also states he was on disability for a short time in 2000 but he moved to a second province and never reapplied for disability while there. As a result, he returned to work doing physically easier and lower paying jobs. He concludes now even these easier jobs are hard on his body.

The physician’s section of the PWD application is completed by the Appellant’s GP. In it, the Appellant is diagnosed with discogenic lumbar back pain and migratory polyarthritis that is likely to continue for 2 years or more. The GP notes although the Appellant requires medication to control his pain, the Appellant’s doses of pain killers have been lowered and his arthritis medication will also be lowered. Under functioning skills, the GP states the Appellant can walk 4+ blocks unaided, climb 5 + stairs, lift 15 – 35 pounds for short periods and remain seated for less than 1 hour. Under cognitive and emotional functions, the GP indicates emotional disturbance, motivation and attention or sustained concentration and notes these conditions are related to the Appellant’s chronic pain and financial worries. The GP comments the only employment the Appellant knows is hard physical labour which exacerbates both of his diagnosed conditions.

The assessor’s section of the PWD application is completed by the same GP. In it, the GP states the Appellant lives alone and notes his chronic pain is distracting and disabling mentally. He concludes that the Appellant has good communication ability and satisfactory writing ability. He indicates the Appellant takes significantly longer in all aspects of mobility and physical ability due to flare ups of chronic pain. The GP does not indicate how much longer than typical.

Under cognitive and emotional functioning, the GP notes minimal impact in 7 aspects, moderate impact in 2 aspects and major impact in 4 aspects and comments pain adversely affects the Appellant's cognitive and emotional functioning and that he has difficulty concentrating when at work.

Under daily living activities (dla) the GP notes the Appellant takes at least twice as long to perform all aspects of personal care and basic housekeeping. Under shopping, the GP indicates the Appellant needs periodic assistance going to and from stores and carrying purchases home, noting he requires rides from friends.

The GP notes the Appellant takes significantly longer in food preparation and cooking but indicates he is independent in the other aspect of meals, paying rent and bills, medications and transportation. The GP indicates the Appellant is independent in all aspects of social functioning other than needing periodic support when dealing appropriately with unexpected demands. The GP concludes the Appellant is functioning marginally in his immediate and extended social networks.

The sections regarding assistance provided by other people and through the use of assistive devices are left blank by the GP. Under additional information, the GP concludes the Appellant must perform all activities slower and it takes longer when his pain flares up. He notes the Appellant's daily narcotic and arthritis medication keep his pain barely manageable.

At the hearing the Ministry confirmed the Appellant is currently a single recipient of income assistance who lives alone. The Ministry stated that the submitted medical evidence did not establish a severe impairment that significantly restricts the Appellant's dla, nor did it indicate that the Appellant needs significant help to perform his dla.

From the information presented, the Panel finds:

- the Appellant is a recipient of income assistance,
- the Appellant lives alone,
- the Appellant is diagnosed by a medical practitioner with an impairment that will continue for more than 2 years,
- the Appellant is diagnosed by a GP with discogenic lumbar back pain and migratory polyarthritis.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant a PWD designation because it concluded he did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that his impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because they determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, that the impairment in the opinion of a prescribed professional did not directly and significantly restrict his ability to perform dla either continuously or periodically for extended periods and that he did not require an assistive device or significant help or supervision of another person to perform his dla.

The criteria for PWD designation is set out in EAPWDA, Section 2 as follows:

*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)

The definition of daily living activities is set out in EAPWDR, Section 2 as follows:

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.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,

- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

The Minister argues a severe physical impairment has not been established because the Appellant's functional skill limits as described by the GP are not considered to significantly restrict his overall mobility and physical abilities and therefore concludes a severe physical impairment has not been established.

The Appellant argues his impairments disable him to the point of not being able to do anything except taking medication and waiting for pain relief.

The GP reports the Appellant has chronic pain that causes him to take twice as long to perform the aspects of mobility and physical abilities, however the Appellant is described as able to walk 4 + blocks, climb the maximum described (5+ stairs) and lift up to 35 pounds for a short time. Given the opinion from the GP that the Appellant is able to walk, climb stairs and lift reflects reasonable independence in mobility and physical ability although he takes longer and struggles with pain, the Panel finds the Ministry made a reasonable determination that a severe physical impairment has not been established. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Ministry argues a severe mental impairment has not been established because it determined the GP did not diagnose a mental condition although the GP notes significant impact in the Appellant's cognitive and emotional functioning.

The Appellant argues his GP noted his pain adversely affects his concentration and other cognitive and emotional functions.

Given that the GP in the physician's section does not diagnose a mental condition and the cause of the impact on the aspects of cognitive and emotional functions is noted to be due to the Appellant's chronic pain and medications, the Panel finds the Ministry made a reasonable determination that a severe mental impairment has not been established by the information supplied by the GP. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Ministry argues the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities because the information from the GP indicates the Appellant performs the majority of his dla independently, although taking significantly longer. Furthermore, the Ministry does not consider taking twice as long to perform dla as a significant restriction.

The Appellant argues his chronic pain causes difficulty in daily functioning and that it takes longer to perform many dla.

In the assessor's section of the PWD application, the GP states the Appellant is independent in 18 of 33 aspects of dla and 12 additional aspects are indicated as taking at least twice as long than normal. The remaining 3 aspects are indicated as needing periodic assistance or support. Given the indication as described by the prescribed professional, that the Appellant accomplishes all but 3 aspects of dla independently although taking longer, the Panel finds the Ministry made a reasonable

determination that the impairment does not directly and significantly restrict the Appellant's ability to perform dla and that EAPWDA, Section 2(2) was not met.

The Ministry argues the Appellant does not require significant help to perform dla because it has not been established that the dla are significantly restricted.

The Appellant argues he is dependent on others for shopping and transportation.

The GP does not indicate that any assistance to the Appellant is provided by any other people or assistive devices other than rides for going shopping, therefore the Panel finds the Ministry made a reasonable determination that the Appellant does not require the significant help of another person to perform his dla. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2) was not met.

The Panel finds the Ministry made a reasonable decision to deny the Appellant a PWD designation because the Appellant did not meet all the legislated requirements in EAPWDA, Section 2 for designation as a PWD. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.