

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 20, 2012 which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act and section 2 of the Employment and Assistance for Persons with Disabilities Regulation for designation as a person with disabilities (PWD). The ministry determined that the appellant met the age requirement and was satisfied that he had a severe physical impairment, which in the opinion of a medical practitioner is likely to continue for at least 2 years. However, the ministry was not satisfied that, in the opinion of a prescribed professional, the appellant's impairment directly and significantly restricted his ability to perform daily living activities (DLA) either continuously or periodically for extended periods and that as a result of those restrictions he required help 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 reconsideration was comprised of a PWD application (Self-Report (SR), Physician Report (PR), and Assessor Report (AR), information provided by the appellant in the Request for Reconsideration, and a denial letter, decision summary.

In the SR the appellant reports that he has ruptured L4 and L5 discs. He is also a diabetic, and is insulin dependant, and has had a heart attack. As a result of his disc problems he reports that he is unable to sit or stand for longer than 10 to 15 minutes. The appellant reports being mentally and physically abused as a child and that life has been tough since his wife left in 2008. The appellant has had difficulty controlling his emotions since that time and has also abused drugs and alcohol.

In the PR, the appellant is diagnosed with diabetes type 2, myocardial infarction, PCI, peptic ulcers, lumbar spinal stenosis and hypertension. His physical functional skills are reported as; able to walk less than 1 block unaided, can not climb stairs with the explanation "you need to hold on to a railing", can lift up to 15 – 35 pounds, and remain seated for less than one hour. The PR states that the appellant was in a motor vehicle accident in 2002, where he fractured the L4-5 which has resulted in severe chronic mechanic lower pack pain. The PR also indicates that the appellant requires periodic assistance with lifting, carrying and holding with the explanation, "no heavy lifting no heavy carrying". In addition, the appellant takes significantly longer with walking in/out doors, climbing stairs, lifting and carrying and holding. The PR also indicates that the appellant has no difficulty communicating and that he has no significant deficits with cognitive or emotional function.

In the AR, completed by the same physician who completed the PR, the appellant is reported to live alone and that his chronic low back pain impacts his ability to manage Daily Living Activities (DLA). The AR reports that all 4 aspects of the appellant's communication skills are listed as good and that he is independent walking indoors, outdoors, climbing stairs and standing, however he takes significantly longer walking indoors, outdoors and when climbing stairs than is typical. The appellant requires periodic help when lifting or carrying and holding, and takes significantly longer than is typical when carrying out these tasks.

With the exception of dressing, which the appellant does manage independently but takes significantly longer than is typical, he independently manages all 8 aspects of personal care, grooming bathing, toileting, feeding self, regulating diet, transfers in and out of bed, transfers on and off chair are all managed independently. He is independent with laundry and basic housekeeping, however he does take significantly longer than is typical when undertaking these activities.

With the exception of carrying purchase home, for which the appellant requires periodic assistance from another person, and take significantly longer than is typical to carry out, the AR comments, "no heavy items", the appellant is independent with 4 of the 5 aspects of shopping including going to and from the store, reading prices and labels, making appropriate choices, and paying for purchases. He is also independent with all 4 aspects of meals, banking, budgeting managing paying rent and bills, all 3 aspects of managing medications, as well as all 3 aspects of transportation with the exception of taking significantly longer than is typical to get in or out of a car.

In section D of the AR, (Assistance Provided for Applicant), the physician reports that when required; assistance is provided to the appellant with heavy chores by his family and friends. If this help was not available he would require home support 2 to 4 hours per week.

In section 3 of the appellant's Request for Reconsideration he states that he does require assistance from his nephew with shopping and laundry.

At the hearing the appellant said that he had brought his brother along to assist him. He did not bring a signed consent for release but his brother said he had sent it to the Tribunal office and in any event the appellant said

he was giving his brother permission to act as his advocate. The advocate stated that the appellant has been living with him and his family for the past 6 to 8 months and was not living independently as reported by his physician. The advocate also reported that the appellant has received a good deal of assistance with DLA from the advocate and his family. As the appellant had not brought his appeal package with him, a copy of the package was provided to him and his advocate along with an explanation of each section. After reviewing the assessment reports, both the appellant and his advocate agreed that based on the information provided by the appellant's physician in the PWD application, they could understand why the ministry determined that the appellant was independent and required very little help with his DLA. However, the advocate did present arguments as to why he believed the information provided by the physician did not provide an accurate assessment of the amount of help that the appellant actually requires, and has been receiving, from family and friends.

The advocate next proceeded to provide some additional information regarding the appellants various physical ailments and the impact they have on his life. For example, the appellant has great difficulty reading and writing as he is dyslexic and has very little formal education. The appellant has also suffered considerable muscle loss and nerve damage in his hands, which result in an inability to grip or lift many objects. The advocate also reported that the appellant has suffered extensive muscle loss in his back, which makes walking or standing difficult, and he requires assistance from others when undertaking almost any physical activities such as doing his laundry or grocery shopping.

As to the appellant's mental health, the advocate reported that the appellant is very depressed and at times has said he just wants life to be over. He explained they were both physically abused as children by their father and that in the advocate's opinion the appellant is in need of some serious psychiatric help. The advocate explained that the appellant's marriage had a very rough end in 2008, and he reports this has only served to increase his depression and abuse of drugs and alcohol in an effort to cope.

As the panel had difficulty reading some of the information provided by the appellant in his Notice of Appeal the panel asked for clarification at the hearing. As neither the appellant nor his advocate was able to decipher the appellant's writing, he chose to paraphrase saying that he needs assistance every day. He needs help with laundry, shopping, and making meals. His medications that he takes make him feel sick, and he is often on his own. He said his diabetes is out of control and that he can't eat or sleep properly.

The ministry stood by the record explaining the information provided in the AR, completed by the appellant's physician, states that the appellant requires periodic assistance carrying purchases home, or lifting objects which weigh more than 15 to 35 pounds, and takes significantly longer with dressing, basic housekeeping, laundry, carrying purchases home and getting in and out of a vehicle. The physician provides no additional narrative indicating how much longer it takes the appellant when undertaking these activities, and goes on to report that the appellant is independent when undertaking 27 of 28 aspects of DLA.

The panel accepted both the appellant and his advocates oral testimony as new evidence under Section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration, and provided additional information regarding the level of support the appellant was receiving, the impact of his medical condition on his life, and his living arrangements over the past 6 to 8 months. The ministry did not object.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods, and that the appellant does not require help to perform DLA as a result of those restrictions. The ministry determined that the age requirement had been met and that the appellant has a severe physical impairment which is likely to continue for 2 years or more.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

Regarding the existence of a severe mental impairment, the appellant's position is that he was mentally and physically abused as a child and that life has been tough since his wife left in 2008. In the SR he states that he has had difficulty controlling his emotions since then, breaking down in tears at times, and abusing drugs and alcohol. At the hearing the appellant's advocate also mentioned that the appellant sometimes talks about wanting to end it all, and believes his brother should be receiving psychiatric help. The ministry's position is that the appellant's physician reports that there are no significant deficits with cognitive and emotional functioning, and no impacts on daily functioning.

The panel finds that both the PR and AR was completed by the appellant's general practitioner (GP) who has known the appellant for approximately 1 year. The GP reports that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional function. Furthermore, he has not completed Part B of the AR which deals with cognitive and emotional functioning, and has provided no explanation. The panel also finds that the physician marked NA on top of Part C of the AR, (Social Functioning), which must be completed if the appellant has an identified mental impairment, including a brain injury. No additional narrative was provided. Based on the information provided the panel finds that the ministry reasonably determined that a severe mental impairment has not been established as required under section 2(2) of the EAPWDA.

Regarding the legislative requirement that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods, the advocate's position is that the appellant's severe physical impairment continuously and significantly restricts his ability walk, stand, grip or lift objects, or undertake basic housekeeping tasks such as laundry and grocery shopping.

The ministry's position is that the AR indicates that the appellant is able to complete 27 of 28 aspects of DLA independently. The ministry does acknowledge that the AR indicates that appellant requires periodic

assistance with carrying purchases home, and that 5 of the 25 aspects of DLA, dressing, laundry, basic housekeeping, carrying purchases home, and getting in and out of a vehicle takes the appellant significantly longer than is typical however, with the exception of commenting "no heavy lifting" beside the aspect, carrying purchases home, no other narrative to explain the frequency, duration and extent of assistance required is provided by the physician.

The panel finds that based on the information provided by the physician in the AR, the appellant is reported to be capable of carrying out 27 of 28 aspects of DLA independently, and requires only periodic assistance with only 1 aspect of DLA, carrying purchases home. The panel also acknowledge that the physician has reported that the appellant takes significantly longer than typical when dressing, doing laundry, basic housekeeping and carrying purchase home. However with the exception of commenting "no heavy lifting" beside the aspect, carrying purchases home, no other narrative to explain the frequency, duration and extent of assistance required is provided. The panel further finds there is a considerable discrepancy between what the physician has reported in the appellant's PWD application, and what the appellant and his advocated reported at the hearing. For example, the appellant reported that he does not live along he lives with his brother's family and that he receives regular support and assistance with DLA from them. The advocate also reported that the appellant is experiencing serious mental health problems which were not identified by the physician. However, the legislation requires that these be confirmed by a medical practitioner, and/or a prescribed professional, and it is their opinions that the ministry must rely on. Therefore the panel finds that based on the information before the ministry at the time of the reconsideration decision it was reasonable for the ministry to have determined that the appellant's impairments do not directly and significantly restrict his ability to perform daily living activities, either continuously or periodically for extended periods, as set out under section 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the appellant argues that he requires the significant help of others to manage DLA such as laundry and carrying purchases home. The ministry argues that, as it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required to perform DLA.

The panel finds that, based on the information provided by the appellant's physician he is reported to be independent in 27 of 28 DLA's. The physician reports that the appellant can lift up to 15 to 35 pounds, and only 1 aspect of DLA, (carrying purchase home), has been identified by the physician as requiring periodic assistance from another person. The panel therefore finds that the ministry reasonably determined that the appellant does not require help to perform DLA as a result of these restrictions as set out in section 2(2)(b)(ii) of the EAPWDA.

The panel finds that based on all the evidence and applicable legislation cited above the Ministry's reconsideration decision was reasonably supported by the evidence and therefore the panel upholds the ministry's decision.