

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of August 23, 2012, which found that the appellant did not meet two of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner his impairment is likely to continue for at least two years. The ministry was satisfied that he has a severe physical impairment but was silent on whether a severe mental impairment existed. 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 help as defined in section 2(3)(b) of the EAPWDA.

### 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 Ministry was not in attendance at the hearing. After confirming that the Ministry was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The following information was before the Ministry at the time of reconsideration:

- An imaging report on the appellant's right knee, dated June 19, 2012. It stated: "There is evidence of an old healed lateral tibia plateau fracture which has resulted in secondary lateral compartmental osteoarthritis. There is lateral compartment joint space narrowing and exuberant marginal osteophyte formation. There is also severe patellofemoral compartment osteoarthritis. The medial compartment is unremarkable. The ankle is unremarkable in appearance."
- A Persons with Disabilities (PWD) application containing three parts: section 1: self-report (SR); section two: physician's report (PR), and section three: assessor's report (AR).
- In the SR, the appellant stated the following:
  - He is 50 years old and has been homeless for 10 years. He has been addicted to heroin since 1979. He was in a car accident at age 22 which broke his right leg. He contracted hepatitis C as a result of his heroin addiction, which results in a severe loss of energy when he detoxes off heroin.
  - Recently he has experienced increased pain and lack of mobility in his right leg, which he attributes to his accident 28 years ago, despite many years of 'good condition.'
  - He panhandles regularly but is sometimes crippled with anxiety due to the large number of people he must deal with, many of whom insult him. He states that these attacks result in severe depression.
  - He believes he requires a dietary supplement for his hepatitis C.
- In the PR, the appellant's general practitioner (GP) reported the following:
  - The appellant was diagnosed with hepatitis C, arthritis, anxiety disorders and substance abuse disorders. He noted heroin addiction for 33 years, with daily use; hepatitis C, which was diagnosed one year previous; severe osteo-arthritis in the right knee post-injury with severe pain and decreased mobility, and panic attacks.
  - No medications interfere with the appellant's ability to perform daily living activities (DLA).
  - In terms of his functional abilities, the appellant has severe osteo-arthritis in his right knee with chronic pain and decreased mobility.
  - He can walk unaided on a flat surface less than one block and climb two to five stairs unaided.
  - He has no limitations with lifting or being seated, nor with communicating in English.
  - There are significant deficits with cognitive and emotional functioning in terms of emotional disturbance, motivation, impulse control and attention or sustained concentration.
  - He met the patient on the day he completed the reports and had not seen him previously.
- The GP also completed the Assessor's Report (AR), in which he noted:
  - The appellant lives alone, on the street.
  - In terms of DLA, the appellant has no difficulty with communication.
  - he is independent with his mobility and physical ability although he requires periodic

assistance carrying, holding and lifting, he uses an assistive device walking outdoors and climbing stairs and for all aspects of this DLA it takes significantly longer than typical.

- Regarding cognitive and emotional functioning, the GP noted a major impact on the following aspects of daily functioning from the appellant's condition:
  - Bodily functions
  - Emotion
  - Impulse control
  - Insight and judgement
  - Attention/concentration
  - Motivation
  - Other mental or emotional problems which the GP described as "Severe anxiety issues."
  - There is a moderate impact on his consciousness and minimal or no impact on the remaining six categories.
- Regarding personal care, the GP found the appellant independent in all categories but taking significantly longer than typical with dressing, grooming, bathing, transfers in/out of bed and on/off of chairs.
- Similarly, the appellant was independent with basic housekeeping but taking significantly longer than typical with laundry and basic housekeeping. The GP noted that the appellant lived on the street.
- The appellant was also determined to be independent with all aspects of shopping but taking significantly longer than typical with going to and from stores, reading prices and labels, making appropriate choices and carrying purchases home. He also required an assistive device going to and from stores and carrying purchases home, although what the type of device was not specified. In the notes the GP stated that sometimes the appellant's friends help carry groceries.
- With meals, the appellant was deemed independent although he required periodic assistance from others in all categories and took significantly longer than typical. The GP noted that he lives on the street and sometimes cooks and eats at friends.
- The appellant was independent with paying rent and bills as well as with his medications.
- He was independent with transportation although taking significantly longer than typical with all aspects.
- Regarding social functioning, the appellant was independent making appropriate social decisions, able to develop and maintain relationships, interact appropriately with others but required periodic support dealing with unexpected demands and securing assistance from others.
- In terms of assistance provided by others the GP noted that he lives on the street and receives some counseling. He receives support from friends and community service agencies.
- Under additional information the GP noted:
  - Patient has chronic severe pain
  - He has been using heroin for 33 years
  - He suffers from generalized anxiety disorder
  - He has had hepatitis C for 10 years
  - He needs financial support to turn his life around.

At the hearing the appellant provided the following information:

- He was in an accident when he was young which injured his lower leg. Since last May he has been in pain. Doctors have administered cortisone but this causes more pain so he has discontinued this treatment.
- He doesn't need help daily but needs to rest after walking two blocks and he uses a cane periodically. It takes about twice as long to get going in the morning as he must warm up his leg.
- It takes a long time to get to the bus stop. Sometimes his leg pain is so bad that he must sit down.
- His panic attacks arise from the insults he receives while panhandling. It sometimes prevents him from going out on the street.
- His hepatitis C gives him a constant 'flu-like feeling' and saps him of energy. He no longer takes heroin as he is on the methadone program.
- The appellant is no longer homeless, living in a suite with a hotplate for cooking and with his own washroom.

The panel finds that the appellant's oral submissions provide further detail with respect to the information and records that were before the minister at the time of reconsideration, and accepts it as evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict him from performing DLA either continuously or for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

### EAPWDA:

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.

### EAPWDR section 2(1):

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.

### *Severe Mental or Physical Impairment*

The ministry accepted that the appellant has a severe physical impairment; however the reconsideration decision is silent regarding a mental impairment. By not making an express finding on severe mental impairment the ministry made an implicit finding that there was not a severe mental impairment.

The panel notes that the appellant was diagnosed with two mental disorders: anxiety and substance-related disorders. The GP noted panic attacks, generalized anxiety disorder and a heroin addiction of 33 years. However, both the GP and appellant note that he has started methadone. The GP noted the impact on the appellant's cognitive and emotional functioning as "major" in seven categories, however it is not clear what the extent or length of these impacts are. As well, the ameliorating impact of the methadone treatment is not addressed.

The appellant states that his anxiety and panic attacks can prevent him from panhandling, however this applies to his ability to earn a living. There is evidence that his cognitive and emotional functioning is affected by his mental condition but it is difficult for the panel to assign a great deal of weight to it. The GP had never met the appellant prior to completing his assessment and there is no evidence beyond the check marks as to how the panic attacks, anxiety or substance abuse serve to incapacitate the appellant. The appellant stated that the insults he receives while panhandling contribute to his panic attacks such that he can't go out, but there is no evidence from either the GP or a mental health professional that he has a severe mental impairment.

Therefore the panel finds reasonable the ministry's implicit finding that there is not a severe mental impairment.

### *Direct and Significant Restrictions*

In his capacity as assessor, the GP found the appellant independent in every category of assessment. This was modified by checkmarks indicating that despite his independence the appellant takes significantly longer than typical in the categories noted above. As well, he requires an assistive device, which the appellant stated is a cane. The evidence of the appellant was that his leg pain slows him down and requires him to rest after walking. The problems facing the appellant from his leg hinder the him most, but despite the GP's indications that he takes significantly longer than typical for many categories and requires a cane, he remains independent in all categories. There

was no evidence regarding the length or severity of these restrictions to indicate that his impairment "directly and significantly restricts the person's ability to perform daily living activities either (A) continuously, or (B) periodically for extended periods." The appellant's only evidence was that he took twice as long to get up in the morning as his leg required a warm-up and that he must rest sometimes after walking.

The panel therefore finds the ministry was reasonable in its finding regarding DLA restrictions.

#### *Help in Relation to DLA*

Regarding the need for help with DLA, the legislation requires that the need for assistance must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods in the opinion of a prescribed professional. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required under section 2(2)(b)(ii) of the EAPWDA.

#### *Conclusion*

Having reviewed and considered all of the evidence, the panel finds that the ministry's decision declaring the appellant ineligible for PWD designation was reasonably supported by the evidence and therefore confirms the ministry's decision.