

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry), dated October 22, 2012, which found that the appellant did not meet three 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. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also 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

With the consent of the parties the appeal hearing was conducted as a written hearing in accordance with section 22(3)(b) of the Employment and Assistance Act.

The information before the ministry at the time of reconsideration included the following:

- The appellant's application for designation as a PWD. The application included a physician's report (PR) and assessor's report (AR) both completed and signed by the appellant's physician on July 5, 2012. The application also included a self-report (SR) completed by the appellant.
- A letter and decision summary from the ministry to the appellant, dated August 22, 2012 advising the appellant that he had been found ineligible for designation as a PWD.
- The appellant's Request for Reconsideration form signed by the appellant on September 21, 2012, which was followed by a submission from his advocate, dated October 11, 2012.

In the SR, the appellant describes the impact from his Crohn's disease:

- He has suffered from his condition since the age of 11 and had two major surgeries, which removed his large intestine, abscesses, fistulas and rectum and created an ileostomy and re-sited his original stoma.
- Bowel blockages have required him to be hospitalized for over a week at a time and ill-health has forced him to give up work. His condition makes it very difficult to hold down meaningful employment.
- He has difficulties with the skin surrounding the stoma, has a prolapsed stoma and parastomal hernia. Because of the poor condition of his skin, the surgeon has advised against another stoma revision. As well it is difficult to adhere his ostomy appliances. This limits his employment as he must always take backup appliances. Moderate work or exercise results in the appliance falling off and worsening his skin condition.
- Regarding his diet, most foods cause pain, discomfort and diarrhea. He has been hospitalized for dehydration resulting from a cold virus or a food item that didn't agree with him. Rough foods or those rich in fibre cause pain and blockages. He has been hospitalized several times for bowel blockages.
- The appellant takes great care in preparing foods which are bland but will nourish him. Eating is a chore and he often avoids eating and feels weak from lack of nourishment. Eating causes strong reactions in his body, sometimes resulting in bloating and weakness for six hours. Eating small snacks helps but is time-consuming. It is difficult and time-consuming to look after himself daily.
- The Crohn's disease has led to chronic skin problems, rashes and sores that don't heal properly. He has also suffered headaches and leg cramps although is not certain if they are connected to Crohn's.

- He continues to have difficulty managing his ileostomy where the skin is compromised and the site area bulges unnaturally causing concern, poor self-esteem and depression. It also precludes him from swimming, which is an activity he used to enjoy. He might obtain a stomal revision but cannot at present due to a recurrence of his disease.
- The appellant also has difficulty cleaning the house, managing finances and finding something meaningful to do to keep his mind occupied. About the time when his pain symptoms and hernia become noticeable his spouse was diagnosed with ovarian cancer. For two years before she died, the pain, stress and cramping became more intense. Even mild stress causes cramping, nausea and pain. The appellant relocated to remove himself from stress but the financial situation for him and his new partner is stressful and his condition has led to tension between him and his partner. She has also had to give up employment for health reasons.

In the PR, the appellant's physician of six years, who has seen him eleven or more times in the past twelve months, diagnosed him with Crohn's disease, depression/anxiety, chronic pain secondary to the above conditions and a chronic skin condition secondary to Crohn's.

In terms of his history, the physician noted:

- Severe digestive system problems with constant vigilance regarding diet, skin, stress management and appliance.
- Severe chronic pain requiring regular large dose narcotics to control.
- Chronic pain and depression cycle variably impacts his functional ability from mild to severe.

The physician noted that the consumption of high dose narcotics by the appellant caused drowsiness and interfered with his DLA. The medications are ongoing. The appellant requires ileostomy supplies for his impairment, which is a permanent condition.

In terms of functional skills the physician assessed the appellant as being able to walk 4+ blocks unaided on a flat surface, climb 5+ stairs unaided, lift 5 to 15 pounds, and no limitation on remaining seated. The physician indicated the appellant has no difficulty with communication. He noted that the appellant has a significant deficit with cognitive and emotional function, specifically emotional disturbance.

Acting as the assessor, the physician found no restrictions to the following DLA:

- Ability to communicate
- Basic housekeeping
- Pay rent and bills
- Medications, and
- Transportation

The physician reported the following restrictions:

- Mobility and Physical Ability: restrictions in 2 of six categories, specifically lifting and

carrying/holding. The physician found he required periodic assistance and takes significantly longer than typical in these categories. The physician commented that it was "limited because of risk to ileostomy appliance."

- Cognitive and Emotional Functioning: no impact on 10 of 14 aspects of cognitive and emotional functioning, a minimal impact on memory, moderate impact on motivation and major impacts on bodily functions and emotion.
- Personal Care: he is independent in 4 of 8 categories but takes significantly longer than typical with bathing, toileting feeding self and regulating diet. The physician noted there was an increased time spent because of the appliance and difficulty with his special diet.
- Shopping: he is independent in 4 of 5 categories but takes significantly longer than typical to carry purchases home.
- Meals: he is independent with safe storage of food but takes significantly longer than typical with meal planning (although he also independent in that category) and food preparation and cooking.
- Social Functioning: the appellant requires periodic support/supervision to develop and maintain relationships (difficulty with relationships) and deal appropriately with unexpected demands (stress aggravates Crohn's). He has marginal functioning with his immediate social impairment although his has "poor interaction/communication with partner." He has good functioning with extended social relationships. (The panel notes that, because the left side of the page was cut off, it is difficult to read the check marks.)
- The appellant receives assistance from his family and requires an ostomy appliance. He does not require an assistance animal.

No new evidence was submitted by either party subsequent to the reconsideration decision and, as it was a written hearing, no additional evidence was submitted at the hearing.

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 physical or 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 periodically 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:

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 appellant, through his advocate, argued the following:

- The ministry incorrectly interpreted the term "severe." The appellant's physician used the word "severe" three times in the PWD application. A medical opinion cannot be ignored and the ministry must base its decision on the information provided by the physician, a prescribed professional, contained in the Physician and Assessor sections.
- The physician reported that the appellant takes high doses narcotics, which interferes with his ability to perform DLA.
- The ministry did not properly take into account the appellant's DLA restrictions. The fact that he can perform walking, climbing stairs and standing should not result in a denial of PWD status. His ability to lift up to 15 pounds is far below the amount a healthy 52 year-old can lift.
- The advocate objects to the ministry's statement (in the original decision), "It is recognized that the applicant requires a serious medical condition (sic) which requires an assistive device, however, the information provided does not demonstrate that his condition has a severe impact on his overall functioning." The advocate argues that the fact that the appellant requires an assistive device satisfies the ministry's criteria and the information provided does demonstrate that his condition has a severe impact on his overall functioning.
- With respect to emotional functioning, the advocate argues that there are some major impacts to emotional functioning. The Hudson decision must be taken into account, specifically which major impacts are reported, not just the number. As well the adjudicator incorrectly combined "moderate impacts" with "no impact" when considering emotional functioning.
- The physician noted "takes significantly longer" in the areas of bathing, toileting, feeding self, regulating diet, meal planning, food preparation and cooking, which are basic human functions. The increase in time resulted from the ileostomy appliance as well as the requirement for special dietary approaches.
- The adjudicator incorrectly included together "marginal" and "good" social functioning. The physician indicated that the appellant requires periodic support/supervision in some areas, which meets the statutory definition with regards to periodic restriction.

- The appellant's ostomy appliance meets the definition of "assistive device" in the legislation.
- The adjudicator does not appear to have taken into account the appellant's self-report regarding his impairment and functioning.

The ministry's position, as set out in the reconsideration decision, is that the evidence does not establish that the appellant has a severe mental or physical impairment, nor that his impairment significantly restricts his ability to perform DLA nor that he requires assistance with DLA as a result of significant restrictions.

Severe Mental Impairment

Panel Decision

In its decision, the ministry notes that the physician diagnosed depression/anxiety resulting from his physical condition and that high doses of narcotics causes drowsiness. While the SR discusses the depression and poor self-esteem suffered by the appellant, there is no evidence that he is seeing a mental health professional or taking medication consistent with a severe mental impairment. The physician notes a major impact on his emotions, a moderate impact on motivation and minimal impact on memory. However, this is not sufficient to disturb the ministry's findings in this regard. It was reasonable for the ministry to determine that a severe mental impairment does not exist.

Severe Physical Impairment

Panel Decision

The appellant's physical impairments are his Crohn's disease, chronic pain and skin condition associated with Crohn's.

The SR describes the extensive medical history experienced by the appellant regarding his Crohn's:

- He has suffered from his condition since the age of 11 and had two major surgeries, which removed his large intestine, abscesses, fistulas and rectum and created an ileostomy and re-sited his original stoma.
- Bowel blockages have required him to be hospitalized for over a week at a time and ill health has forced him to give up work. His condition makes it very difficult to hold down meaningful employment.
- He has further difficulties with the skin surrounding the stoma, has a prolapsed stoma and parastomal hernia. Because of the poor condition of his skin, the surgeon has advised against another stoma revision. As well it is difficult to adhere his ostomy appliances. This limits his employment as he must always take backup appliances. Moderate work or exercise results in the appliance falling off and worsening his skin condition.

The panel acknowledges that the appellant has a severe case of Crohn's disease but the legislation relates to the severity of the impairment, not the condition. The PWD application defines impairment as "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." Evidence from a prescribed professional and the appellant can be considered when assessing a severe impairment.

Apart from a lifting restriction the physician rated the appellant at the highest functional levels regarding walking, stair climbing and sitting. In terms of physical functioning he is independent with housekeeping, shopping (except for carrying purchases home) and transportation. In his SR the appellant describes:

- He has difficulties with the skin surrounding the stoma, has a prolapsed stoma and parastomal hernia. Because of the poor condition of his skin, the surgeon has advised against another stoma revision. As well it is difficult to adhere his ostomy appliances. This limits his employment as he must always take backup appliances. Moderate work or exercise results in the appliance falling off and worsening his skin condition.
- Regarding his diet, most foods cause pain, discomfort and diarrhea. He has been hospitalized for dehydration resulting from a cold virus or a food item that didn't agree with him. Rough foods or those rich in fibre cause pain and blockages. He has been hospitalized several times for bowel blockages.
- The appellant takes great care in preparing foods which are bland but will nourish him. Eating is a chore and he often avoids eating and feels weak from lack of nourishment. Eating causes strong reactions in his body, sometimes resulting in bloating and weakness for six hours. Eating small snacks helps but is time-consuming. It is difficult and time-consuming to look after himself daily.
- The Crohn's disease has led to chronic skin problems, rashes and sores that don't heal properly. He has also suffered headaches and leg cramps although is not certain if they are connected to Crohn's.
- He continues to have difficulty managing his ileostomy where the skin is compromised and the site area bulges unnaturally causing concern, poor self-esteem and depression. It also precludes him from swimming, which is an activity he used to enjoy. He might obtain a stomal revision but cannot at present due to a recurrence of his disease.

The fact that he cannot obtain employment is not relevant to his PWD application. With respect to the time it takes to prepare food, the panel notes that he is constrained by the time needed to prepare a proper diet as opposed to a physical constraint regarding food preparation, e.g. impaired fingers or forearms.

The appellant's advocate argues that the ministry erred by not accepting the physician's opinion regarding severity. The legislation places this discretion in the hands of the ministry, not a prescribed professional.

The panel acknowledges his restrictions with respect to toileting, ability to lift and his skin condition but in terms of the overall picture the panel acknowledges that while the appellant is suffering with painful medical conditions that make it difficult for him to work, the panel finds that the ministry reasonably concluded that the appellant does not have a severe physical impairment.

Restrictions to DLA

The appellant's position is that his ability to perform DLA is restricted in a way that satisfies the legislative requirements. This results from his condition, the narcotics he takes, his emotional state and his ostomy appliance.

The ministry's position, as set out in its reconsideration decision, is simply that the information provided does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods.

Panel Decision

The legislation – s. 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's physician. This doesn't mean that other evidence shouldn't be factored in, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied."

The physician noted these restrictions:

- **Mobility and Physical Ability:** restrictions in 2 of six categories, specifically lifting and carrying/holding. The physician found he required periodic assistance and takes significantly longer than typical in these categories. The physician commented that it was "limited because of risk to ileostomy appliance."
- **Cognitive and Emotional Functioning:** no impact on 10 of 14 aspects of cognitive and emotional functioning, a minimal impact on memory, moderate impact on motivation and major impacts on bodily functions and emotion.
- **Personal Care:** he is independent in 4 of 8 categories but takes significantly longer than typical with bathing, toileting feeding self and regulating diet. The physician noted there was an increased time spent because of the appliance and difficulty with his special diet.
- **Shopping:** he is independent in 4 of 5 categories but takes significantly longer than typical to carry purchases home.
- **Meals:** he is independent with safe storage of food but takes significantly longer than typical with meal planning (although he also independent in that category) and food preparation and cooking.
- **Social Functioning:** the appellant requires periodic support/supervision to develop and

maintain relationships (difficulty with relationships) and deal appropriately with unexpected demands (stress aggravates Crohn's). he has marginal functioning with his immediate social impairment although his has "poor interaction/communication with partner." He has good functioning with extended social relationships. (The panel notes that, because the left side of the page was cut off, it is difficult to read the check marks.)

The EAPWDR lists the DLA to be assessed:

- (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.

Dealing with the appellant's ability to relate to, communicate or interact with others effectively, the ministry was reasonable in finding a lack of evidence that the appellant is directly and significantly restricted for extended periods.

With respect to his ability to move about indoors and outdoors, the evidence is that while he has difficulty lifting because of his ileostomy appliance, he is independent with the remaining aspect of this DLA. The ministry was reasonable in finding that he is not directly and significantly restricted, nor requires the use of an assistive device or help when looking at the category as a whole.

The physician noted that the appellant takes significantly longer than typical when bathing, toileting, feeding himself and regulating his diet, which relates to his ability to perform personal hygiene and self care. This takes longer because of his appliance. However there is no evidence that his feeding and diet regulation take longer because he is physically unable to do them, rather he has strict dietary needs and must spend more time on these activities. Restrictions are evident with toileting and bathing but this is not sufficient to establish a significant restriction with respect to the overall DLA.

Similarly with his ability to shop for personal needs, the restriction is with carrying purchases home, while he is independent in the other four categories. The ministry noted a lack of narrative and a lifting ability of up to 15 pounds on this topic which was a reasonable finding.

The appellant was noted as taking significantly longer than typical with meal planning, food preparation and cooking, which relates to his ability to prepare own meals. As noted above, the evidence shows that the longer time requirement arises not from his inability to perform these tasks but from the need to be careful in taking care of his diet. The panel finds the ministry reasonable in not finding a restriction.

Overall, the panel finds the ministry was reasonable in determining that the evidence does not show that the appellant's impairment directly and significantly restricts his ability to perform daily living activities either continuously, or periodically for extended periods.

Help with DLA

The appellant's position is that he has an ileostomy appliance which satisfies the criteria under the legislation. The panel notes that it is included as an option under assistive devices on the PWD application. However, apart from toileting, there is no evidence that this device provides assistance for other DLA. The ministry concluded that it could not determine whether help was required in the absence of finding DLA restrictions. The appellant's reliance on an ileostomy appliance for toileting does not render this finding unreasonable.

Conclusion

The panel acknowledges that the appellant suffers from painful medical conditions, however, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision determining the appellant ineligible for PWD designation was reasonably supported by the evidence, and therefore confirms the ministry's decision.