

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry), dated November 6, 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

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 June 27, 2012. The application also included a self-report (SR) signed by the appellant on June 25, 2012.
- A letter and decision summary from the ministry to the appellant, dated September 11, 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 17, 2012.

In the SR, the appellant describes his dyslexia, Crohn's disease and osteo-arthritis:

- He has had dyslexia his entire life and cannot function without significant support from his wife and his computer.
- It affects all aspects of his life, specifically short-term memory, organization, reading, writing and numeracy. This affects his ability to obtain employment as his condition worsens when under stress. He feels he is at a disadvantage when it comes to equal opportunity employment.
- His Crohn's disease affects his life due to severe pain, incontinence, embarrassment and the necessity of being near a toilet at all times.
- The osteo-arthritis precludes him from walking more than a few yards and for no more than 5 minutes because of severe pain. This affects his daily activities such as cooking, cleaning, bending and getting dressed. His wife must help him with these activities.

In the PR, the appellant's physician of one year diagnosed him with Crohn's disease, dyslexia and osteo-arthritis in his right knee. In the health history portion of the PR form the physician reported that flares of his Crohn's disease limit his ability to focus on work, he has increased pain and needs frequent visits to the bathroom. The flares are exacerbated with increased stress. The appellant's dyslexia affects his reading, comprehension and short-term memory. His knee arthritis affects his mobility. Each of his conditions is chronic/life-long. His medications alleviate his symptoms. He has developed coping skills and uses a computer to help with his dyslexia. The appellant has not been prescribed any medication or treatments that interfere with his ability to perform DLA.

In terms of functional skills the physician assessed the appellant as being able to walk 2 to 4 blocks unaided on a flat surface, climb 5+ stairs unaided, lift 15 to 35 pounds, and no limitation on remaining seated. The physician indicated the appellant has difficulty with communication caused by cognitive difficulties. He noted that the appellant has difficulty processing information under stress which affects his ability to do job interviews. He has significant deficits with cognitive and emotional functioning, specifically executive (planning, organizing, sequencing), language (written comprehension) and memory.

In part E of the PR, the physician found no restrictions to DLAs and opined that the appellant's impairment did not directly restrict his ability to perform DLA but that his main difficulty is his inability

to obtain a job due to his poor interview skills from his dyslexia.

Acting as the assessor, the physician found no restrictions to DLA with the exception that his reading was only satisfactory and that walking indoors/outdoors and climbing stairs takes significantly longer than typical during flares in his arthritis pain.

In terms of cognitive and emotional functioning there is no impact on 11 of the 14 categories listed in section B of the AR. The physician noted a moderate impact on attention/concentration (poor short-term memory) executive functions (planning, organizing) and minimal impact on memory, all affected by his dyslexia and it affects job interviews and certain tasks. The appellant was found independent in all aspects of social functioning and had good functioning with immediate and extended social networks. Assistance is provided by his computer to compensate for his impairment. No assistance animals are required.

At the hearing the appellant made the following submissions:

- His dyslexia affects his short-term memory and organization skills.
- He is extremely reliant on his computer and his wife.
- He can't remember what to buy at the store and, if he makes a list, he often loses it.
- He can store only three bits or pieces of information at any one time.
- He leaves things out of the fridge.
- He has poor motor control and has extreme clumsiness, which causes him embarrassment.
- He must rely on his wife for organization and prompting.
- His Crohn's disease requires him to be near a toilet at all times which is embarrassing.
- His arthritis precludes from sustained physical involvement. He can walk but with pain.
- He wants to be off income assistance but feels he is unemployable.
- He suffers from financial hardship.

The panel admitted the appellant's testimony as evidence as it provides more detail regarding the impacts of his impairment, and constitutes oral testimony in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and submitted no new evidence.

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 argues the following points:

- His disability is recognized in the Canadian Charter of Rights and the BC Charter and it affects his daily living and employability.
- His dyslexia is primarily a short-term problem and he holds only three bits of information before it is replaced by new information. This significantly impacts his life and he requires assistance from his wife and use of IT to function.
- His daily living is significantly impacted by his dyslexia. The medical report doesn't emphasize this problem because his GP is not an expert in this area.
- He argues that his condition precludes him from gaining employment and that income assistance is insufficient to live on.
- His arthritis prevents him from performing manual labour.
- A letter of support from the Vancouver Dyslexic Society was not considered, which addresses the impact his disability has on his employment.
- He has evidence of discrimination based on his disability in that he processes images, not linear information. This gives the appearance of disorganized thought.
- He has a strong work ethic despite his disability which prevents his employment.
- He cannot support his family in the amount he receives from income assistance and faces difficulties with his bills.
- His arthritis and Crohn's have severely impacted his ability to perform manual labour.
- His condition also affects his home life as his disabilities make it hard to function well at home.

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.

Severe Mental Impairment

Panel Decision

In its decision, the ministry notes that the physician did not diagnose a mental impairment. While it is true that the appellant's dyslexia is coded under "Diseases of the nervous system & sense organs," as opposed to "Mental disorders," the panel interprets mental impairment not in strict accordance with the diagnosis but rather the effect on the appellant. In this case he has poor memory, organization and executive skills, as noted by both the appellant and the physician. He has difficulty retaining

more than three "bits" of information, has poor motor control and cannot organize well. He is extremely dependent upon his computer and his wife to assist him. The panel finds the ministry was not reasonable in finding the absence of a mental impairment.

Having established this, the next question is whether the mental impairment is *severe*. To assess the severity of an impairment one must consider the nature of the impairment and its impact on daily functioning as evidenced by functional skill limitations and the degree of independence in performing DLA. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence including that of the appellant.

While the DLA restrictions noted by the physician indicate independent social functioning, he discusses significant deficits with planning, sequencing and calculations, as well as written comprehension and memory. The appellant's self-report and argument make it clear that his dyslexia results in a severe mental impairment, and is consistent with the physician's report. His forgetfulness and inability to organize and process information properly are well-documented. The extent of his dyslexia is severe in relation to others with the same diagnosis as well as the impact on his mental functioning. The panel finds that the level of impairment described by the appellant and the physician indicates that the ministry was also not reasonable in finding the absence of a severe mental impairment.

Severe Physical Impairment

Panel Decision

The appellant's physical impairments are his osteo-arthritis in his right knee and his Crohn's disease.

The functional skills assessment reported by the physician in the AR demonstrates that the appellant's physical impairment makes it difficult for him to walk or climb stairs when his arthritis flares. The appellant stated that his Crohn's disease causes pain, incontinence and requires him to be nearby a toilet at all times. He states that his arthritis precludes, bending, cooking, cleaning, dressing and manual labour however these restrictions are not noted in the PR. The physician found the appellant independent with all DLA except his mobility when he experiences a flareup of arthritis.

The panel acknowledges that the appellant is suffering with painful medical conditions that make it difficult for him to work, but based on the evidence that his condition is not significantly impacting his ability to perform DLA, 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 also restricted by his mental impairment.

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 substantially 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."

In the PR the physician noted that the appellant can walk 2 to 4 blocks unaided, can climb 5+ steps and lift 15 to 35 pounds. There is a moderate impact on his attention/concentration and executive skills and minimal impact on his memory. His mobility is restricted when his arthritis flares up and his reading is "satisfactory" as opposed to "good" for other aspects of communications. Otherwise, in the AR, the physician indicated that the appellant is independent with respect to all DLA. The appellant's evidence was that he is reliant on his computer and his wife for mental functioning, his mobility and DLA are restricted and he must remain near a toilet at all times. However, based on this evidence, it cannot be said that the appellant's ability to perform DLA is significantly restricted either continuously or periodically for extended periods. Accordingly, the panel finds that the ministry was reasonable in determining that the appellant does not satisfy this legislative criterion.

Help with DLA

The appellant's position is that he requires assistance from his wife and his computer to manage DLA.

The ministry's position, as set out in its reconsideration decision, is that as it has been established that DLA are not significantly restricted, it can be determined that significant help is not required from other persons.

On the evidence, the appellant requires assistance from his wife and his computer with respect to cognitive functioning. This cannot be described as being the "significant help or supervision of another person" as required by EAPWDA s. 2(3)(b)(ii). The appellant does not require an assistance animal.

The panel finds that based on the evidence the ministry reasonably determined that the appellant does not require help to perform DLA as defined by the legislation.

Conclusion

The panel acknowledges that the appellant suffers from painful medical conditions and a frustrating mental impairment. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision declaring the appellant ineligible for PWD designation was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant, and therefore confirms the ministry's decision.