

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") October 24, 2012 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because he did not meet all of the requirements for such designation as set out in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. Specifically, the Ministry was not satisfied that the evidence established that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions he requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner his impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's PWD application consisting of his July 18, 2012 self-report, a physician's report (PR) completed on July 30, 2012 by a doctor who indicated that the Appellant was a new patient because the previous general practitioner died in the spring of 2012, and an assessor's report (AR) completed on July 30, 2012 by a doctor who indicated she had known the Appellant for 2 weeks and had seen him between 2-10 times.
2. Diagnostic Imaging Report for the Appellant dated June 1, 2012 and described in the PR.
3. Radiology Report for the Appellant dated February 16, 2012 and described in the PR.
4. Laboratory requisition for tests for various conditions, including Hepatitis C qualitative RNA.
5. Appellant's request for reconsideration with the statement that he did not feel that his application was filled out properly. He wrote that he was told to put his worst days on the application. The Appellant stated that he can have 1 bad day a week or 7 bad days a week. He wrote that an intern, not his regular doctor or specialist, filled out the application on the day she saw him, which was one of his better days. The Appellant indicated that he receives over 4½ days of help a week with cleaning, cooking and shopping. He is on a pain management program and takes medications daily.

In his self-report, the Appellant described his disabilities as chronic back pain and losing feeling in his left arm and hand after 2 to 5 minutes of sitting, standing or walking, affecting him in every daily routine. The Appellant wrote that most days he cannot get off the couch because of too much pain. Being horizontal seems to take pressure off his lower back and his pinched nerve due to sciatica. The Appellant stated that it's hard to urinate. Also, he has to be careful even coughing due to low blood pressure. He stated that he spends a lot of time lying down because he is prone to dizziness and passing out (2-3 episodes a day). The Appellant wrote that everything is changing his ability to function and go outside. He spends many days in the same clothes and not eating, and depression and anxiety play a big part. The Appellant stated that he has basically become a hermit. He has a high tolerance to pain as he used to burn himself with cigarettes and broke glass bottles over his head. But, he wrote that he finds himself in tears most days as the pain is that unbearable.

The Panel notes that, in its reconsideration decision, the Ministry referred to Dr. W. as the physician who completed the PR and the AR. However, a different doctor's name, Dr. S., is indicated as the "resident" who completed the AR. Both doctors practice at the same clinic. Also, the Appellant wrote that an intern, not his regular doctor, completed his application. It is therefore not clear to the Panel if the intern completed just the AR or both the PR and the AR and so, it will refer to the "doctor(s)" who completed the PR or AR as applicable.

The doctor who completed the PR described the Appellant's diagnoses as chronic back pain and degenerative disc disease, hepatitis C and sciatica. The doctor described the severity of the Appellant's impairment as severe chronic neck pain, unable to perform extreme physical labour, unable to sit for prolonged periods of time (less than 2 minutes), and spends much of his day lying in bed. The doctor also wrote, regarding the new diagnosis of hepatitis C, that the date of onset and mode of contraction are unknown. There is a possible role for treatment in the future. The doctor referred to a June 2012 CT of the Appellant's spine which showed moderate degenerative disc disease at C6-C7 with severe left foraminal stenosis resulting in root impingement and to a February 2012 CT scan of the Appellant's spine showing moderate degenerative disc disease at L5-L6 with broad base disc bulging and narrowing.

With respect to the Appellant's functional skills the doctor indicated that the Appellant can walk unaided on a flat surface for 4+ blocks, climb 5+ steps unaided, lift 5-15 lbs. unaided and he can remain seated for less than 1 hour. The doctor reported that the Appellant has significant cognitive and emotional functioning deficits, specifically in emotional disturbance, motivation, and in attention or sustained concentration. The doctor added "chronic pain has led to mood disorder including depression and poor motivation." This doctor did not complete the section for impacts to daily living activities and reported no use of assistive devices by the Appellant.

In the AR, the doctor (a resident) listed the following impairments as impacting the Appellant's ability to manage daily living activities: chronic back pain, unable to sit/stand for more than 5 minutes without pain, and chronic neck pain with paresthesias into the left arm. The doctor indicated that the Appellant's ability to communicate is good in all aspects. She also indicated that the Appellant is independent in all aspects of mobility and physical ability; that is, walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. However, the doctor also noted that walking indoors and outdoors, climbing stairs and standing take significantly longer and for these activities, the doctor added "due to pain (3X)". For cognitive and emotional functioning, the doctor reported the following: major impacts to emotion and to motivation; moderate impacts to bodily functions, attention/concentration and other emotional or mental problems; minimal impacts to consciousness and impulse control; and, no impacts to insight and judgment, executive, memory, motor activity, language, psychotic symptoms and to other neuropsychological problems. The doctor added these comments: "anger, frustration secondary to chronic pain"; "doesn't care to interact with others, prefers to keep to himself"; "lies on couch most of day due to pain, poor appetite/motivation, will wear same clothes for several days in a row"; and, "depressed mood and difficulties [with] attention & concentration".

With respect to the impacts of the Appellant's impairments on his ability to manage daily living activities, in the AR the doctor reported that the Appellant is independent in all of the listed daily living activities. Those activities include all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation and all aspects of social functioning. The doctor also provided additional information for some of the daily living activities, as follows:

- Regulate diet – "poor appetite, doesn't eat well".
- Going to and from stores – needs periodic assistance, takes significantly longer and "assistance from friend periodically".
- Making appropriate shopping choices – "limited by finances".
- Carrying and paying for purchases – needs periodic assistance and "assistance from friend".
- Shopping - "Requires assistance from friend to run errands/groceries periodically due to chronic pain and inability to complete tasks himself".
- Banking, budgeting, and paying rent and bills – needs periodic assistance and "assistance from friend".
- Getting in and out of a vehicle – takes significantly longer "due to pain".
- Using public transit, and transit schedules and arranging transportation – "avoids".
- Able to develop and maintain relationships – "difficulty in past, avoids relationships".
- Interacts appropriately with others – "doesn't like meeting people or having conversations [with] others, describes as 'shy'".

The doctor indicated that the Appellant has marginal functioning in his immediate and extended social networks, but added no comments.

Regarding assistance provided by others, in the AR, the doctor noted that help is provided by friends and the church food bank, but provided no details. The doctor indicated no assistance is provided by an assistance animal and reported no use of an assistive device. The doctor also provided the following additional information: "suffers from extreme pain, unable to sit/stand for long periods of time"; and "depression/low mood as consequence of chronic pain and social/living situation".

In his notice of appeal, the Appellant stated that he feels he was misrepresented by the doctor (who was not his regular doctor) in filling out the original application. He wrote that he knows people on disability with ¼ of the problems that he has. In his appeal statement, the Appellant wrote that he cannot begin to say how much pain he lives with on a daily basis and they don't know if his back can be fixed with an operation. The problem is a pinched nerve with 2 fused discs. He also has low blood pressure which makes him prone to blacking out on almost a daily basis. The Appellant stated that he also has Hepatitis C. He feels that he wasn't properly represented when his application was originally sent in. He has no-one to represent him, so he submitted this letter.

The Panel finds that the information in the Appellant's appeal statement is consistent with the information about his impairments that the Ministry had at reconsideration. Therefore, the Panel admits that information as evidence in support of the Ministry's reconsideration decision in accordance with section 22(4) of the Employment and Assistance Act.

The Ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because he did not meet all of the requirements for such designation as set out in section 2(2) of the EAPWDA, and specifically that the evidence did not establish that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions he requires help to perform those activities.

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal.

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 (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.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal.

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(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 Panel will consider each party's position regarding the reasonableness of the Ministry's decision under the applicable PWD criteria at issue in this appeal.

Severe Physical Impairment

The Ministry's position is that, although the Appellant's impairments may impact his physical functioning, based on the information provided by the doctor(s) there was not enough evidence to establish a severe physical impairment. Specifically, the Ministry considered the doctor's report in the PR about the Appellant's ability to walk unaided for 4+ blocks, climb 5+ stairs and lift 5-15 lbs and the doctor's report in the AR that the Appellant can independently manage all of his mobility and physical functioning activities, although some of the activities take three times longer due to pain. The Ministry also noted that there were no reports that the Appellant requires any equipment or devices to help compensate for his impairments.

The Appellant submitted that his PWD application was not filled out properly and he was misrepresented by the doctor, who is not his regular physician. His position is that because of his medical conditions, particularly the degenerative discs, he deals with chronic pain on a daily basis affecting his routines. Most days he cannot get off the couch, and he spends many days in the same clothes and not eating. The Appellant also submitted that his low blood pressure makes him prone to passing out on almost a daily basis. Because of his severe impairment he receives over 4 ½ days of help a week with cleaning, cooking and shopping.

The Panel notes that there are inconsistencies in the evidence. The Appellant's evidence is that because of his chronic pain he spends most days on the couch, in the same clothes and not eating. He also needs help for several days a week with cleaning, cooking and shopping. However, in the PR, the doctor noted that the Appellant is able to walk 4+ blocks unaided, climb 5+ stairs unaided, and lift 5-15 lbs., although his ability to sit for long is limited. Then, in the AR, the doctor reported the Appellant as independent in all aspects of physical functioning and daily living activities requiring physical activity, although some take significantly longer and for others he needs periodic assistance. There is also no evidence that the Appellant uses an assistive device. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant has a severe physical impairment.

Severe Mental Impairment

Although, it acknowledged that the Appellant's chronic pain may impact his cognitive and emotional functioning, the Ministry's position is that the doctor(s) did not provide enough evidence to establish that the Appellant has a severe mental impairment. The Ministry also found that there was no diagnosis of a mental impairment.

The Appellant submitted that depression and anxiety play a big part in his life. He finds himself in tears most days because the pain is unbearable. He also spends many days in the same clothes and

does not eat. He has become a hermit.

The Panel finds that the Ministry reasonably found that there were no diagnoses of any mental health conditions in either the PR or the AR. The Appellant's evidence is that depression and anxiety play a big part in his life and he is in tears most days because of the unbearable pain. The information in the PR and AR does indicate that there are some impacts to the Appellant's cognitive and emotional functioning, ranging from major to none. Also, in the AR, the doctor attributed the Appellant's mood disorder, including depression and lack of motivation, to his chronic pain. However, in neither report did the doctor(s) indicate how the mood disorder affects the Appellant's daily life. In fact, the Panel finds that there is little evidence in the PR and AR about how any cognitive or emotional functioning deficits affect the Appellant's ability to function, except that he experiences some difficulties with attention and concentration. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish a severe mental impairment.

Restrictions in the Ability to Perform Daily Living Activities

The Ministry's position is that there was not enough evidence from the doctor(s), the prescribed professional(s), to establish that the Appellant's severe impairments significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods. The Ministry considered the doctor's report that the Appellant can independently manage all of his daily living activities, although periodic assistance is needed for some tasks and some physical activities take significantly longer. The Ministry also determined that it was unclear from the evidence how much help is needed.

The Appellant's position is that because of his severe impairments he cannot manage his daily living activities on his own. In fact, he has help for more than 4 ½ days a week with cleaning, cooking and shopping. He also goes days without changing his clothes and eating, and he spends days on the couch. The Appellant also argued that the doctor did not complete his application properly. He submitted that the intern who completed the form saw him on one of his better days, but he can have 1 bad day a week or 7 bad days a week.

To satisfy the requirements of EAPWDA section 2(2)(b), the opinion of a prescribed professional is needed to confirm that the Appellant's severe impairments directly and significantly restrict his daily living activities continuously or periodically for extended periods. In this case, the doctor(s) who completed the PR and the AR is the prescribed professional. The Panel finds that the Ministry considered these reports in its reconsideration decision and it specifically found that, in the AR, the doctor reported that the Appellant can independently manage all daily living activities. The Ministry also considered the reports indicating that periodic assistance is required for some activities, but it reasonably noted that there was no evidence about the frequency or the type of assistance needed. Therefore, based on all of the evidence from the doctor(s), the Panel finds that the Ministry reasonably determined that, in the opinion of a prescribed professional, the Appellant's impairments do not directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Ministry's position is that because it has been established that daily living activities are not significantly restricted, it cannot be determined that significant help is required from other persons. The Ministry also determined, based on evidence in the PR and the AR, that the Appellant does not require the services of an assistance animal or an assistive device.

The Appellant's position is that he does require help with his daily routines because of his severe impairments. His severe health conditions affect his ability to function and he gets help more than 4½ days a week with cleaning, cooking and shopping.

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional, in this case the doctor(s) who completed the PR and the AR. The Panel finds that, in the AR, the doctor did not indicate that the Appellant uses an assistive device or an assistance animal. The Panel also notes that the doctor reported that the Appellant receives help from friends and a church, but provided no information about the extent or frequency of that help, even where periodic assistance was noted for some activities. Therefore, based on all of the evidence, and the Panel's finding that the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted was reasonable, the Panel further finds that the Ministry's determination that the Appellant does not meet the requirements of section 2(2)(b)(ii) of the EAPWDA, also was reasonable.

Conclusion

After reviewing the evidence and the applicable enactments, the Panel finds that the Ministry's reconsideration decision, determining that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence. Therefore, the Panel confirms that decision.