

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") December 18, 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:

- Self-report in which he indicated that he chose not to complete the self-report and that his wife is filling out the applicant information section.
- Physician's Report ("PR") and Assessor's Report ("AR") both completed by the same neurologist on August 24, 2012. The doctor indicated that this was his first contact with the Appellant who has been a patient for a month.
- Information added to the AR by a registered psychiatric nurse on September 17, 2012. The nurse indicated that this was his first contact with the Appellant.

### 2. Appellant's request for reconsideration dated December 4, 2012 in which he wrote that his wife helped him complete the request.

## *Diagnoses*

In the PR, the neurologist diagnosed the Appellant with right hemi paresis, sensory loss and dysarthria secondary to left hemisphere thalamic vascular infarct. The neurologist wrote that the Appellant suffered an ischemic stroke on July 26, 2012. He also wrote that "[The Appellant's] current (as of July 30, 2012) National Institute of Health Stroke Scale (NIHSS), (a measure of severity of deficits) is 4 (four)"; "1 for dysarthria", "1 for right arm pronation drift", "1 for right leg weakness/circulation", and "1 for right hemisensory loss but not frank anesthesia".

## *Physical Impairment*

In the PR, the neurologist reported that:

- The Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- The anticipated duration of the medications/treatments will be "lifelong – not anticipated to interfere with daily activities."
- The Appellant does not require any prostheses or aids for his impairment.
- With respect to the degree of impairment - "most stroke patients with thalamic infarct do have persistent/prominent symptoms. Patient is referred to physio/occupational and speech language pathology to mitigate effects of stroke. Many stroke patients have improvement (but not complete resolution) in the first 3-6 months following stroke."
- Functional skills are unknown for how far the Appellant can walk unaided and how many stairs he can climb unaided. The Appellant can lift 5-15 lbs "right arm" and has no limitations with remaining seated.
- The Appellant has difficulties with communication - "mild dysarthria".
- The Appellant is in the early stroke recover phase and most stroke patients make significant improvements in the first 3-6 months following a stroke.

In the AR, the neurologist reported that:

- "Weariness & sensory loss down right side, affecting dominant hand function" to describe the Appellant's impairments that impact his ability to manage daily living activities.
- The Appellant's ability to speak, write and hear is good, and writing is satisfactory due to

declining functioning in his right hand.

- For mobility and physical ability, the Appellant is independent with walking indoors and outdoors, and with standing, although the latter takes significantly longer. The Appellant takes significantly longer climbing stairs, single stairs climb ("leg weakness").
- The Appellant needs periodic assistance with lifting, and with carrying and holding because "weakness is clear barrier to using dominant arm."

The Appellant submitted that:

- He suffers increased tiredness after even moderate activities.
- He is not able to lift heavy objects on one side.
- He has life- long dyslexia which has worsened since his stroke.

#### *Mental Impairment*

In the PR the neurologist reported that:

- There are no significant deficits with cognitive and emotional functioning.
- The "patient has had a clear stroke with new deficits. Current deficits listed, and clearly does affect daily living. Patient is early in stroke recover phase though. Most stroke patients make significant improvements in the first 3-6 months following stroke."

In the AR, the neurologist reported that:

- Impacts to cognitive and emotional functioning, include minimal impact to emotion (excessive/inappropriate anxiety, depression etc.) and to executive (planning/organizing etc.), and no impact to bodily functions, to consciousness, to impulse control, to insight and judgement, to memory, to motivation, to motor activity, to language, to psychotic symptoms, to other neuropsychological problems and to other emotional or mental problems.

The psychiatric nurse added:

- "Executive – becomes lost in new environment"; the Appellant was used to one city's streets and moved to another city about a year ago.

The Appellant submitted that:

- Strokes have increased his medical expenses and cognitive impairment makes it impossible to seek employment and provide for his family. He needed help from his wife to complete the application.

#### *Restrictions to Daily Living Activities & Assistance Required*

In the AR, the neurologist reported that:

- The Appellant is independent in all aspects of personal care, basic housekeeping, shopping (except for carrying purchases home), meals (except for meal preparation and cooking), medications, transportation, and social functioning.
- The Appellant needs periodic assistance with carrying purchases home "depending on size of purchases". For meal preparation and cooking, the Appellant requires periodic assistance, noting "decreased dexterity dominant arm."

- The Appellant is independent paying rent and bills - "decreased dexterity will make writing, typing difficult though."
- For functioning in social networks, the Appellant has marginal functioning in his immediate social network and good functioning in his extended networks.
- The Appellant's spouse currently assists with dexterous tasks.
- The Appellant does not have an assistance animal; use of a cane indicated.

The psychiatric nurse added that:

- "Lifting/carrying purchases home – takes several trips to carry purchases. Takes 2-3xs longer than usual".
- The Appellant changed his phone number to avoid contact with other friends.
- "Condition impacts ability to perform with his ADL; i.e., lifting, carrying, walking."

The Appellant submitted that:

- His medical condition impacts his daily living and financial situation.
- He experiences difficulty doing daily activities which cause extreme tiredness.
- Cognitive impairments as a result of the stroke make communicating difficult.
- He must keep stress and exertion to a minimum to prevent further strokes.
- His current income assistance designation does not cover extra medical costs resulting from his illness. It is difficult to afford necessary medication.
- He needs assistance with daily living activities.
- He has a life-long disability which has worsened since his stroke.

The Appellant also submitted copies of receipts for parking at hospitals and for prescriptions, dating from July 2012 and August 2012, as examples of medical expenses that he and his wife cannot afford. PWD designation is important for their financial circumstances and his wife is also a PWD.

For this appeal the Appellant's advocate submitted written argument and a form signed by a different doctor, dated February 4, 2013, with check marks in boxes by the following information:

- Confirming that the Appellant suffers from severe medical conditions including cerebral vascular activities, right hemi paresis, sensory loss – numbness overall his left side, dysarthria secondary to left hemisphere thalamic vascular infarct, overall weakness, hypertension, high blood pressure, anxiety.
- Conditions will continue for at least 2 years
- Appellant is directly and significantly restricted in his ability to perform his daily living activities continuously as a result of the conditions noted above.
- Moderate impact to emotion, impulse control, insight and judgment, attention and concentration, executive, memory, motivation, motor activity, language, other neuropsychological problems and other emotional or mental health problems; and minimal impact to bodily functions, consciousness and psychotic symptoms.
- Appellant requires the following assistance: basic mobility – assistive device (walking cane); standing – restrictions – experiences dizziness and anxiety; climbing stairs – no restrictions; lifting/carrying/holding including shopping purchases – no restrictions – "must limit lifting to <10lbs. with R. arm".; personal care – restrictions – takes 3X as long; basic housework – restrictions – experiences dizziness, restrictions with bending, restrictions with moving and

lifting items; laundry – restrictions with lifting – requires a wagon to carry clothes because unable to carry basket of dirty laundry; shopping – restrictions – restricted from making appropriate choices, easily overwhelmed, unable to follow the grocery list, anxious when standing in line, extreme irritability, restrictions with lifting groceries; meals – restrictions – restricted from planning meals, easily overwhelmed, unable to follow basic directions, easily confused, anxious when completing independently; banking/paying rent and bills – restrictions – with budgeting, paying bills and rent, becomes confused and anxious, continuous assistance – requires his wife to oversee all banking needs; medications – restrictions – requires reminders to take medication and monitor refilling, continuous assistance – wife oversees his medications intake and reminds him daily to take his medications; using transit/transit schedules – no restrictions.

- As a result of noted restrictions, appellant requires walking cane as an assistive device for continuous assistance.

At the bottom of each page of this form is the following typed statement: "IT IS MY MEDICAL OPINION that [the Appellant] has severe medical conditions that are likely to continue for more than two years. I have checked the applicable boxes above to confirm that he is directly and significantly restricted in his ability to perform his daily living activities and requires assistance to perform the activities referred to above."

There is no information on this form or in the Appellant's submissions regarding how long he has been a patient of this doctor, how often this doctor has seen him or what the doctor based this assessment on.

The Ministry provided no comments regarding this document or additional information. It relied on its reconsideration decision.

In the February 4, 2013 report, the physician ticked the box beside the diagnosis of "anxiety". The Panel notes that although there was no specific diagnosis of anxiety in the neurologist's reports, in the AR minimal impacts to "emotion (e.g., excessive or inappropriate anxiety, depression, etc.)" is noted. Therefore, the Panel admits this February 2013 diagnosis as well as the other information in the February 2013 form, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the Appellant's medical conditions and as being in support of information that was before the Ministry on reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that 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 Appellant does not have 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.

### **Evidentiary Findings**

With respect to the checklist form submitted by the Appellant's advocate for this appeal, the Panel notes that there is no indication on the form or in any other submissions regarding how long the doctor who signed it has known the Appellant, how many times he has seen the Appellant as a patient or what information, such as medical reports, this doctor relied on to check the boxes. The statements beside each check box have details about specific restrictions, such as "restricted from making appropriate choices, easily overwhelmed, unable to follow the grocery list, anxious when standing in line, Extreme irritability, restrictions with lifting groceries". However, there is nothing to indicate what these statements are based on.

In addition the restrictions reported in the February 2013 form are markedly different than those reported in the PR and the AR, but no explanation is provided for these discrepancies or changes in restrictions. For example, in the AR, the Appellant is reported as being independent walking indoors and outdoors, but in the February 4, 2013 report, the Appellant's basic mobility is reported as restricted to 1-2 blocks by fatigue and confusion and he uses a walking cane. In the PR, no significant deficits with cognitive and emotional function are reported and in the AR, only minimal impacts to emotion and executive functions are indicated. However, in the February 4, 2013 report, moderate impacts are reported to 11 aspects of cognitive and emotional functioning. The Panel also notes that the neurologist, a specialist, wrote in the August 2012 PR that many stroke patients have significant improvements in the first 3-6 months following a stroke. Yet in the February 2013 report, signed by a physician, additional restrictions are reported without explanation. Also, the statement at the bottom of the form regarding restrictions to daily living activities repeats the language in section 2(2) of the EAPWDA without any independent information from the physician. Therefore, the Panel gives the information in this February 4, 2013 form little weight.

### **Severe Physical Impairment**

The Ministry's position is that, based on the information provided by the neurologist and by the Appellant, it was not satisfied that the information establishes a severe physical impairment. The Ministry did acknowledge that impairments due to the stroke may impact the Appellant's physical functioning.

The Appellant's position is that the stroke has impacted his physical functioning and his daily living activities, causing extreme tiredness and restrictions to his physical functioning. He is not able to lift heavy objects on one side and he must keep stress and exertion to a minimum to prevent further strokes. He also uses a cane.

The EAPWDA provides that the determination of the severity of impairment is based on whether the Minister is satisfied a severe impairment has been established, taking into account all of the evidence including that of the Appellant. That legislation is also clear that the fundamental basis for the

assessment is the evidence from a prescribed professional respecting the type of impairment and its impact on daily functioning. In this case, the combined evidence from the Appellant, the neurologist and the psychiatric nurse indicate that the Appellant's health conditions impact his ability to carry items, to use his right arm, and to climb stairs. The Appellant submitted that his physical functioning is restricted, including by extreme tiredness and the inability to lift heavy objects on one side. However, the neurologist also reported that the Appellant is independent walking indoors and outdoors, standing, and with various aspects of daily living activities requiring physical functioning, such as personal care, basic housekeeping and getting in and out of vehicles. Therefore, based on the evidence, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish a severe physical impairment.

### **Severe Mental Impairment**

The Ministry is not satisfied that the information in the Appellant's application and request for reconsideration establishes a severe mental impairment. The Ministry specifically considered the neurologist's report indicating that there are no significant deficits in the Appellant's cognitive and emotional functioning, and the psychiatric nurse's report of minimal impact to emotion and executive, and no impact to other aspects of cognitive and emotional functioning.

The Appellant's position is that he has cognitive impairments as a result of the stroke. The Appellant's advocate submitted that the Appellant has difficulty communicating his restrictions and the amount of assistance he has with his medical practitioner, in large part due to the significant mental health restrictions impacting his daily functioning. Other than this submission and the February 4, 2013 report, the Appellant provided no other information about any mental impairments or deficits to his cognitive and emotional functioning, except for what was reported in the AR.

The Panel finds that there was no diagnosis of any mental health condition by the neurologist. Also, there was no evidence of mental impairments in the PR, only minimal impacts to emotion and executive functions reported in the AR, and the Appellant's statement about difficulty with communicating. Therefore, based on the evidence, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

### **Restrictions in the Ability to Perform Daily Living Activities**

The Ministry's position is that it does not have enough information from the neurologist and the psychiatric nurse to establish that the Appellant's impairment, in the opinion of these prescribed professionals, significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. The Ministry noted that the neurologist and the psychiatric nurse only reported that the Appellant required periodic assistance with certain tasks, but they provided no information about how often the Appellant needs assistance. Also, in the PR and in the AR, the majority of the Appellant's daily living activities are noted as independently managed.

The Appellant submitted that his medical condition impacts daily living activities, causing extreme tiredness and mobility restrictions. He also has cognitive impairments as a result of the stroke, making communicating and daily tasks difficult. His wife provides significant assistance, including completing his PWD application form.

To satisfy the requirements of EAPWDA section 2(2)(b), the opinion of a prescribed professional is



required confirming that the Appellant's severe impairments directly and significantly restrict his daily living activities either continuously or for extended periods. The Panel finds that the Ministry considered the reports of the neurologist and the psychiatric nurse and that it reasonably determined that these prescribed professionals reported that the Appellant is independent in almost all aspects of daily living activities. Only lifting, carrying purchases home, food preparation and cooking require periodic assistance, but neither the neurologist nor the nurse provided any information about how often or in what way such assistance is needed. The Panel found that, in light of the neurologist stating that many stroke patients improve significantly in the first 3-6 months and without more information about the relationship between the Appellant and the physician who completed the February 4, 2013 form and the basis for that assessment, it could give the information in that report little weight. Therefore, based on the evidence from the neurologist and psychiatric nurse, the Panel finds that the Ministry reasonably 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.

### **Help with Daily Living Activities**

The Ministry's position is that because it determined that the Appellant's daily living activities are not significantly restricted, it could not determine that significant help is required from other persons.

The Appellant's position is that he does need help with daily living activities, especially with lifting and carrying. His wife provides significant assistance, including completing the PWD application form. In the AR and in the February 2013 report, the use of a cane is reported.

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional. Although the neurologist reported that the Appellant needs periodic assistance with certain daily living activities, no details were provided about the frequency or extent of such help, only that the Appellant's wife helps with dexterous tasks. Also, the use of a cane is reported, but with no details about the extent to which the Appellant relies on a cane for mobility. Therefore, based on all of the evidence and the applicable enactments, and given the Panel's finding above that the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted was reasonable, the Panel finds that the Ministry's determination that the Appellant does not meet the requirements of section 2(2)(b)(ii) of the EAPWDA, was also reasonable.

### **Conclusion**

Based on the evidence and applicable enactments, the Panel confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence.