

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 29 January 2013 which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. The ministry acknowledged that, for the duration of his treatment for hepatitis C, the ministry is satisfied the appellant will have a severe combined mental and physical impairment that in the opinion of a prescribed professional will directly and significantly restrict his ability to perform daily living activities (DLA). However, the ministry determined that, at the time of its reconsideration decision, the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, the person requires help to perform those activities.

The ministry did determine that the appellant satisfied the other criterion: he has reached 18 years of age.

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 appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the EAR.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 08 October 2012. The Application contained:
 - A Physician Report (PR) dated 18 October, 2012 completed by the appellant's general practitioner (GP) who has known the appellant for 3 years and seen him 2 – 10 times in the past year.
 - An Assessor Report (AR) dated 25 October 2012 completed by a social worker (SW) who has known the appellant for 6 months and seen him 2 – 10 times in that period.
 - The appellant chose not to complete a Self Report.
2. The appellant's Request for Reconsideration dated 2013/9/25 (sic) and received by the ministry on 28 January 2013, containing Reasons written by the GP.

Physician Report:

Diagnosis

The GP diagnoses the appellant with T12 compression (fell off a ladder September 2011), hepatitis C (onset 2008, started treatment recently x 40 weeks), and osteoarthritis in the right shoulder (onset 2011).

Health history

The GP writes that the appellant has good range of motion in back but claims it is painful to bend and lift. He was working when he fell off a ladder and fractured T12 vertebrae and hurt tendons in right shoulder. He knew he had hepatitis C for three years. He has started hepatitis C treatment through a clinic in a nearby city. He will be back to the clinic in November for viral counts, etc. and will see specialists for chronic back pain later that month.

The GP indicates that the medication and treatments for hepatitis C will interfere with his ability to perform DLA. The GP states that the anticipated duration of these medications/treatments will be 48 weeks. The GP states that the appellant does not require any prostheses or aids for his impairment.

Duration

The GP indicates that the appellant's impairment is not likely to continue for two years or more. The GP comments that the duration to complete the treatment will be " + 48 weeks from today;" he also indicates that this will be enough time for rehabilitation from the T12 compression.

Functional skills

The GP assesses the appellant as able to walk 4+ blocks unaided, climb 5+ steps, lifting limited to under 5 pounds, as able to remain seated for 1 to 2 hours and as having no difficulties with communications. The GP reports no significant deficits with cognitive and emotional function.

DLA

The GP assesses the appellant as being actively restricted in mobility outside the home on a periodic basis and with management of finances. He indicates that the appellant is not actively restricted with respect to personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home and the use of transportation. The GP comments that the appellant is not able to walk more than four blocks. In terms of assistance with DLA, the GP notes that the appellant has no income.

Additional comments

The GP writes:

"He needs financial assistance for the next 48 weeks to get his hep C properly treated and get his back (T12) fracture healed and rehabed. Had trouble with alcohol abuse in the past, but has been sober since 3 July 2012."

Assessor report

The SW indicates that the appellant lives with family or friends. She states that he will be doing medical treatments with medications which will impair him physically and cognitively and that he will have periods of intense nausea/vomiting and a decline in physical ability. She assesses his ability to communicate as good in all respects.

Mobility and physical ability

The SW assesses the appellant as requiring periodic assistance from another person for walking indoors, walking outdoors and climbing stairs, (comment: "decreased strength is expected, with the risk of falls"), standing, lifting, and carrying and holding. The SW comments that "treatments will cause severe and prolonged periods of fatigue, inactivity and confusion."

Cognitive and emotional function

The SW assesses the likely impacts of his hepatitis C treatment as follows: major impacts in the area of bodily functions, consciousness, emotion (depression) and other emotional or mental problems. She assesses a moderate impact in the areas of attention/concentration, executive, and motivation. Minimal impacts are expected in the areas of impulse control and memory. No impact is expected in the areas of insight and judgment, motor activity, language, psychotic symptoms, or other neuropsychological problems.

The SW comments that depression will be expected during treatment due to inactivity and reliance on assistance. He is undergoing this treatment in order to improve a chronic health condition. He will not be able to function at his normal baseline and physical ability will fluctuate daily until treatment (48 weeks with recovery stage) is completed. He will experience periods of confusion, balance and coordination will decline and he will have periods of flu-like symptoms.

DLA

Personal care: independent in all aspects except bathing (risk of falls due to balance and coordination/confusion).

Basic housekeeping: periodic assistance from another person required for laundry and basic housekeeping.

Shopping periodic assistance required from another person for going to and from stores and continuous assistance from another person or unable, or takes significantly longer than typical, for carrying purchases home; independent for reading prices and labels, making appropriate choices, and paying for purchases.

Meals: periodic assistance from another person and takes significantly longer than typical for food preparation and cooking; independent for meal planning and safe storage of food.

Pay rent and bills: independent in all aspects.

Medications: periodic assistance from another person required for filling/refilling prescriptions; independent for taking as directed and safe handling and storage.

Transportation: independent in all aspects.

The SW comments that muscle mass will deteriorate during treatment due to inactivity, and lack of appetite is a side effect. Driving may be impaired during treatments. He will have periods of prolonged flu-like symptoms that will make it difficult for him to be independent with DLA.

Social functioning

The SW reports the appellant is independent in all listed areas of social functioning, and assesses the appellant with good social functioning with both his immediate and extended social networks.

Assistance provided

The SW indicates that the help he requires for DLA is provided by friends, with no further description or comment provided. No assistance is provided through the use of an assistive device or an assistance animal.

Additional information

The SW writes that during the 48 treatment plan and recovery time, the appellant will not be fit to work as there would be a significant impact/risk of harm physically.

Request for Reconsideration

The GP writes:

"...[The appellant's] current medical concerns are the following and therefore he is not able to work currently: 1. Active hepatitis C infection for which he will be starting immune suppressive therapy for a period of about a year. This means that he will experience side effects such as extreme fatigue, weakness, nausea, vomiting, susceptibility to all kinds of infections, headaches, shortness of breath, dizziness, abdominal pain, joint pain, weight loss, fevers, dry skin, insomnia, blurred vision, all of which will drastically impair his ability to carry out ADL such as bathing, mobilizing, personal care as well as ADL such as shopping, meal preparation, driving, etc. 2. He suffers from depression and has started on

an antidepressant in January. He has significant impairment of emotional and cognitive function (depressed mood, anxiety, reduced motivation, reduced concentration and attention).

In his Notice of Appeal, dated 12 February 2013, the appellant writes that his doctor, his social worker and his specialist have stated that he cannot work. He suffers from the worst depression ever. He is in total pain 24/7. He is alone in this province, with no friends and doesn't know anybody here in BC. He will need help for the next two years. It is not, and will not, be easy for him.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because he did not meet all the requirements in section 2 of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that, at the time of the reconsideration decision, the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and 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 did determine that he met the other criterion in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

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 section of the EAPWDR applies to this appeal:

- 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.

Positions of the parties

The position of the ministry is that, while acknowledging that for the duration of his treatment for hepatitis C, the appellant will have a severe combined physical and mental impairment, the duration of the treatment for hepatitis C is less than two years. The duration and severity of any impairments not related to the hepatitis C treatment are uncertain. Therefore, the Ministry determined that at the time of the reconsideration decision the appellant's impairments would not last longer than 2 years. The ministry noted that in the request for reconsideration the appellant's GP has indicated that the appellant suffers from depression, with significant impairment of emotional and cognitive function. The ministry argued that there was no indication that these conditions were likely to continue for two or more years and no indication of the extent of the impact of these impairments on daily functioning. The ministry therefore found that there was insufficient evidence that the appellant has a severe mental and or physical impairment that is likely to continue for at least two years and that significantly restricts his daily living activities either continuously or periodically for extended periods. Further, the ministry held that, as it had not been established that DLA are significantly restricted as described by the legislation, it cannot be determined that significant help is required from other persons, from the use of an assistive device or from an assistance animal.

The position of the appellant is that he needs the PWD assistance provided by the ministry because the debilitating side effects of his treatment for hepatitis C means that he cannot work during the course of his treatment and for some time afterwards. He suffers from severe depression and constant pain. It is unfair and unreasonable for the ministry to deny him PWD benefits while he is going through this difficult time, trying to regain his health.

Panel findings

The panel notes that the legislation clearly states that PWD designation is limited to applicants who have a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years. In the PR, the GP indicated that the appellant's impairment is not likely to continue for two years or more, commenting that the duration to complete the treatment will be "± 48 weeks from today." The GP also indicated that this will be enough time for rehabilitation from the T12 compression.

In the Request for Reconsideration, the GP reported that the appellant had begun to suffer from depression. However, as the ministry noted in its reconsideration decision, there was no indication as to how long this condition is likely to continue. In the PR, the GP did not report any significant cognitive or emotional deficits, while in the AR the SW listed several anticipated cognitive and emotional impacts on daily functioning, among which was a major impact on emotion (depression), leaving the panel uncertain as to whether the depression reported by the GP in the Request for Reconsideration is a side effect of the hepatitis C treatment or is expected to be an ongoing condition.

The panel notes that one of the diagnoses reported by the GP is osteoarthritis in the right shoulder, a condition which could be expected to continue for at least two years, though not confirmed as such by the GP. The GP reports the appellant's ability to lift is restricted to less than 5 pounds and in the AR the SW assesses the appellant restricted in basic housekeeping and carrying purchases home. The

panel finds that, based on the narratives and other information, the impacts on daily functioning reported in the PR and AR are related primarily to what are expected to be restrictions when the appellant is undergoing treatment, and there is no information provided to distinguish between which restrictions reported in the AR are as a result of the osteoarthritis and which stem from the hepatitis C treatment. The panel therefore finds that the ministry reasonably determined that there is insufficient information to establish that this impairment is severe, is likely to continue for at least 2 years, and that it directly and significantly restricts the appellant's ability to perform DLA. The panel further notes that there is no description of any help provided or required to perform any DLA restricted by the osteoarthritis.

Based on the foregoing, the panel finds that the ministry reasonably determined that the appellant did not meet the criterion of having a severe mental or physical impairment that is likely to continue for at least 2 years, as required by section 2(2)(a) of the EAPWDA, that directly and significantly restricts his daily living activities and that he needs help to perform those activities, as required by section 2(2)(b).

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence and therefore confirms the ministry's decision.