

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") February 19, 2013 reconsideration decision which determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because he did not meet all the requirements for PWD designation in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. The Ministry was not satisfied 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 dated November 13, 2012 with no self-report, a November 8, 2012 physician's report ("PR") completed by a doctor who has known the Appellant for 3 years and seen him 11 or more times in the 12 months preceding the PR and an assessor's report ("AR") completed by the same doctor on the same date.
2. Appellant's request for reconsideration with a February 8, 2013 letter from the same doctor and a February 14, 2013 letter from a social worker.

### *Diagnosis*

In the PR, the Appellant's doctor described the Appellant's diagnosis as peripheral vascular disease (PVD) onset 2012 and a long history of ETOH (alcohol) dependence onset 2000. In the February 8, 2012 letter, the doctor wrote that the Appellant suffers from generalized anxiety since 2000.

### *Physical Impairment*

- In the PR, the doctor noted the severity of the Appellant's medical conditions as difficulties walking due to chronic non-healing foot ulcer and claudication (recent bypass surgery – internal iliac femoral); long history of abuse and dependency treated with numerous detox sessions – currently sober one month.
- Functional skills reported by the doctor - able to walk unaided less than 1 block, climb 2-5 steps unaided, lift 5-15 lbs. and remain seated with no limitations.
- In the AR, the doctor noted that for walking indoors and outdoors, and climbing stairs the Appellant needs periodic assistance – "uses walking cane, holds onto walls/counters"; "moderate disability in walking due to PVD and foot ulcer"; and, for standing, lifting, carrying and holding the Appellant is independent.

### *Mental Impairment*

- In the PR, the doctor indicated significant deficits with cognitive and emotional function in emotional disturbance and added "chronic anxiety, insomnia and depression".
- In the AR, the doctor did not fill in the section for impacts to cognitive and emotional functioning or the sections regarding restrictions to social functioning and social networks.
- The social worker wrote that the Appellant has experienced anxiety since childhood and since he was 12-13 years old used alcohol to function; alcohol has a serious detrimental effect on his physical health; he has not been drinking for the past few months, but relapsed in the past; has experienced life changing setbacks which even for a person without a disabling anxiety disorder would have made functioning socially difficult; and, his inability to function in a work or social environment has been a constant during the 6 months she followed him.
- In the February 8, 2013 letter, the doctor wrote that the Appellant's general anxiety is so severe that it is difficult for him to leave the house. He used alcohol in the past to self medicate but quit 2 months ago. He is on medication to help with anxiety, an SSRI, but still feels the symptoms to such an extent that he does not function socially at all.

### *Daily Living Activities*

In the PR the doctor noted:

- Direct and continuous restrictions to basic housework, daily shopping, mobility inside and outside the home and to use of transportation; and, no restrictions to personal self care, meal

preparation, management of finances and of medications; adding "moderate restrictions in mobility".

- Direct and continuous restrictions to social functioning, adding ETOH, social anxiety.
- In the AR, the doctor indicated the Appellant is independent in all aspects of personal care, meals, paying rent and bills, medications and transportation; needs continuous assistance with basic housekeeping - "mobility is limited", but is independent with laundry; needs continuous assistance with going to and from stores, and carrying purchases home - "mobility is limited", but is independent in all other aspects of shopping.
- In the February 8, 2013 letter, the doctor wrote that because of the generalized anxiety, it is difficult for the Appellant to leave the house. Although on medication, he still feels the symptoms to such an extent that he does not function socially at all.

#### *Help with Daily Living Activities*

- In the PR, the doctor noted that the Appellant receives home care for wound dressing.
- In the AR, the doctor wrote that the Appellant requires help for wound care every 2 days provided by health professionals; and the doctor indicated use of cane and crutches routinely; does not have an assistance animal.

In his notice of appeal, the Appellant wrote that his doctor confirmed that he has a severe condition. His sister provides a significant amount of support and help with his daily living activities. He also submitted a February 27, 2013 letter from the same doctor who wrote that the Appellant has severe anxiety, peripheral vascular disease and chronic lower back pain from a vertebral fracture. The Appellant informed the doctor that he requires daily assistance from his family to call him in the morning so that he will get up. He also needs help cleaning his home. It is very unkempt, as he does not have access to help.

At the hearing, the Appellant said he has lots of trouble walking because of a compressed disc and nerve damage, and because of the wound in his foot. In October 2012, he also had lower bypass surgery to help the circulation in his feet and in November 2012, he was so sick he thought he was going to lose his leg. The Appellant said that mentally he is often paralyzed. He usually goes to the store at night unless someone drives him. The Appellant said he is taking medication for his "mixed-up head" and he goes to AA meetings. He also stated that his place used to be spotless and he used to love to cook, especially with his son. Now his place is like a pig sty and he often eats soup right of the pot. The Appellant said he does not have the desire to do anything. He walks into his kitchen and walks out. His bathroom is dirty and he never had a dirty bathroom before.

The Appellant's sister, who is also his representative, said she is very close to her brother and has been involved in all of the difficulties he's experienced. She tried to encourage him to manage his money carefully, to pay his bills and to stay abreast of his situation. The Appellant's sister said that the Appellant has no concept of time and the effect that has on his life. She also said that her brother cannot take care of himself. He needs intensive care.

The Appellant's sister submitted the following documents: her observations of her brother's health conditions and living problems from about 2008; her edits to the daily living activities section of the AR; her correspondence with an MLA and various health officials; and letters from two of the Appellant's friends. These documents provided details of the Appellant's medical treatments, how he copes with his daily life and efforts by his sister and others to get him help.

The Appellant's friends, both of whom have known the Appellant since the early 1990s, wrote that they keep an eye on him and go to his place every couple of days to check on him. One wrote that he took the Appellant to the hospital when he found the Appellant in very bad shape after a fall. The same friend stated that the Appellant is so depressed that he doesn't seem capable of taking care of himself on his own, not even the basic things he has to do to live. The other friend wrote that the Appellant does not leave his apartment for days at a time. He also takes the Appellant to AA meetings, to get groceries and various other errands. The friend will contact the Appellant's sister if he doesn't get a response from the Appellant for a couple of days.

The Ministry did not object to the admissibility of these documents or the February 27, 2013 doctor's letter.

The Panel finds that the testimony at the hearing from the Appellant and his sister, as well as the February 27, 2013 doctor's letter (except for the reference to the chronic lower back pain from a veritable fall), and the documents submitted at the hearing, provide additional details about the Appellant's medical conditions, how they affect his ability to manage his daily life and attempts to get him help. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the oral testimony, the letter and the documents as being in support of the evidence that the Ministry had at the time of its reconsideration decision. With respect to the doctor's reference to the Appellant's lower back pain, the Panel finds that it is a medical condition, which was not in the evidence before the Ministry at the time of reconsideration, and therefore, the Panel does not admit that information into evidence.

The Ministry reviewed and 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 PWD 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.

### **Applicable Legislation**

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:

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 "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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.

### **The Panel's Decision**

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 is not satisfied that the information provided is evidence of a severe physical impairment.

The Ministry noted that the Appellant is independently able to stand, lift, carry and hold items with periodic help to walk indoors and outdoors, and to climb stairs. The Ministry determined that the Appellant's current functional skill limitations are more in keeping with a moderate degree of impairment, and the duration and severity of impairment may improve once the foot ulcer is healed.

The Appellant submitted that his doctor confirmed that he has a severe condition. The Appellant stated that he can barely walk and almost lost his leg in November 2012. Because of his physical limitations, the doctor confirmed that he uses a cane and has to hold on to walls and counters. Also, he requires assistance with carrying things and with general housework.

#### *The Panel's Findings*

Section 2(2) of the EAPWDA states that the Minister must be satisfied that the Appellant has a severe impairment. For this assessment, the evidence of the Appellant is considered, but that legislation also provides that the opinion of a prescribed professional is required to assess how the Appellant's impairment impacts his daily functioning. The Appellant's doctor provided that opinion.

The doctor diagnosed the Appellant with a chronic non-healing foot ulcer resulting from the PVD and reported that the Appellant has limitations with walking indoors and outdoors to the extent that he needs a cane, and holds onto walls and counters. The Appellant also provided evidence that he can barely walk. However, the doctor described these restrictions as a moderate disability due to PVD and the foot ulcer. In addition, the doctor reported that for standing, lifting, carrying and holding the Appellant is independent, although his mobility is limited in basic housekeeping, going to and from stores and carrying purchases. The Panel notes that the doctor also indicated that the Appellant is independent in other activities, which require some degree of physical functioning, such as dressing, transfers in/out of a bed or on/off a chair. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe physical impairment.

#### **Severe Mental Impairment**

The Ministry noted that the doctor reported chronic anxiety, insomnia and depression resulting in one deficit to cognitive and emotional functioning, as well as continuous restrictions to social functioning described as ETOH and social anxiety. However, the Ministry noted that, in the AR, no impacts on daily functioning or social functioning resulting from any of these conditions were reported. Therefore, the Ministry was not satisfied that there is evidence of a severe mental impairment.

The Appellant submitted that he has suffered from anxiety since 2000 and from depression, as confirmed by his doctor. The doctor and the Appellant provided evidence that his anxiety is so severe that it is difficult for him to leave the house. Even with medication, he does not function socially at all and he is unable to take care of himself or his house, or to go out of the house. In addition, the Appellant submitted letters from his friends and evidence from his sister about how difficult it is for him to function every day, how he does not take care of himself or his home and how he finds it difficult to even leave his home because of his depression and anxiety.

#### *The Panel's Findings*

As noted in the previous findings, the determination of severity is based on the evidence from the Appellant and the opinion of a prescribed professional. The Appellant provided evidence about how his depression and anxiety make it difficult for him to leave the house, to care for his home and to take care of himself. He said he often feels paralyzed. The evidence from the Appellant's friends and his sister confirmed that the Appellant does not leave his home on his own and that he has difficulty taking care of himself.

The Appellant's doctor described the Appellant's conditions as chronic anxiety, insomnia and

depression, but the same doctor reported only one impact to cognitive and emotional functioning; that is, emotional disturbance from these conditions. The doctor did note continuous restrictions to social functioning and wrote that, even with medication, the Appellant feels the symptoms of generalized anxiety to the extent that he does not function socially at all and he finds it difficult to leave the house. This information is consistent with the evidence the Appellant provided.

However, the Panel finds that the doctor provided no additional details about how these conditions impact other aspects of the Appellant's ability to function; for example, taking medications, making appropriate decisions or securing help from others. In fact, the doctor reported that the Appellant is independent in the areas of personal self-care, management of medications, and paying rent and bills, all of which require some degree of mental functioning. Therefore, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant has a severe mental impairment.

### **Restrictions to Daily Living Activities**

The Ministry considered the doctor's report of continuous restrictions to basic housework, daily shopping, mobility inside and outside the home, and the use of transportation. The Ministry also noted that the doctor described these restrictions as "moderate restriction in mobility". In addition, in the AR, the doctor reported that 25 of the 28 daily activities are managed independently and there is no information about support or supervision required with social functioning. Therefore, the Ministry's position is that because the majority of daily living activities are performed independently and because the Appellant's current physical impairment may improve when his foot heals, the information from the prescribed professional does not establish that the Appellant's impairments significantly restrict daily living activities either continuously or periodically for extended periods.

The Appellant's position is that he is unable to manage any of his daily living activities on his own. He cannot look after his home or go out on his own. Also, his doctor confirmed that he does not function socially at all and his sister said he needs continuous care.

### ***The Panel's Findings***

To satisfy the requirements of section 2(2)(b) of the EAPWDA, the Appellant must provide the opinion of a prescribed professional confirming that his severe impairment directly and significantly restricts his daily living activities. In this case, the Appellant's doctor, completed the PR and the AR. The Panel finds that when the PR and the AR are considered together, the doctor reported continuous restrictions to basic housework, daily shopping, mobility inside and outside the home, carrying purchases home and the use of transportation. However, in the PR the doctor also wrote that the restrictions are moderate in mobility and in the AR, he added that mobility is limited to two of the restrictions reported there. Therefore, the Panel finds that the doctor qualified the extent of the Appellant's restrictions as being moderate.

The doctor also reported continuous restrictions to social functioning and in the February 8, 2013 letter, he wrote that the Appellant finds it difficult to leave the house and does not function socially at all. However, the doctor provided no other information about impacts from a mental impairment, such as his ability to make appropriate decisions or about any restrictions to other daily living activities, such as personal care or managing medications. The doctor also did not provide information about what kind of help the Appellant needs, other than noting that the Appellant gets help with wound care and he uses a cane and crutches. Therefore, based on the opinion from the prescribed professional,

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 by a severe impairment, it could not determine that significant help is required from other persons. The Ministry noted that the Appellant uses a cane and crutches while his foot is healing.

The Appellant's position is that he needs continuous help from another person to perform his daily living activities. He is unable to look after his home or go out without assistance. He also has to use a cane and crutches for mobility.

**The Panel's Findings**

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional, in this case the Appellant's doctor. Although the doctor noted that the Appellant had continuous restrictions in some daily living activities, the doctor provided no information about what kind of help the Appellant needs, except that the Appellant uses a cane and crutches, and needs help with treatment for his wound. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that because direct and significant restrictions in the Appellant's ability to perform daily living activities have not been established, it could not be determined that the Appellant needs help to perform those activities.

**Conclusion**

After considering all of the evidence and the applicable legislation in the Appellant's circumstances, the Panel confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence.