

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 16 April 2013 denying 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. Specifically the ministry determined that the information provided did not establish that the appellant has a severe physical impairment and that his impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) 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 the information provided established that the appellant has a severe mental impairment, and that he satisfied the other 2 criteria in the legislation: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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

1. The appellant's PWD Designation Application dated 07 January 201. The Application contained:
  - The appellant's Self Report (SR).
  - A Physician Report (PR), dated 08 December 2013, completed by the appellant's general practitioner (GP) who has known the appellant for since November 2010 and seen him –11 or more times in the past year.
  - An Assessor Report (AR) dated 08 December 2012, completed by the same GP.
2. The appellant's Request for Reconsideration, dated 03 April 2013, including a submission by the appellant.

In the PR, the GP diagnoses the appellant with coronary artery disease, with onset September 2012. The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

### Severity/health history

#### *Physical impairment*

PR:

The GP reports: "Patient has high-grade stenotic lesion in proximal right coronary and left descending coronary arteries." The GP indicates that the appellant's condition will continue for 2 years or more, noting that he is booked for an angioplasty.

The GP reports that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.

Functional skills: The GP reports that the appellant is able to walk less than 1 block unaided, climb 2 to 5 steps unaided, lift 5 to 15 pounds, and has is able to remain seated 1 to 2 hours.

The GP reports that the appellant has no difficulties with communication.

AR:

The GP states: "Manages ADL's and IADL's with help of wife."

The GP assesses the appellant's ability to commute to speak as good, reading as poor (comment: not highly educated), and writing and hearing and satisfactory.

#### *Mental impairment*

PR:

The GP reports that the appellant has a significant deficit with cognitive and emotional function in the area of emotional disturbance. The GP comments: "patient and his wife have significant financial stressors and precarious living conditions."

AR:

The GP assesses the appellant's medical impairment impacts his daily functioning as follows:

Moderate impact on emotion, impulse control and motivation,

Minimal impact on the tension concentrate/concentration, executive, memory and motor activity, and

No impact on bodily functions, consciousness, insight and judgment, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

Ability to perform DLA

AR:

The GP made the following assessments with the GP's comments in parentheses:

- Mobility and physical ability: independent for walking indoors, periodic assistance from another person required for walking outdoors, and takes significantly longer than typical for climbing stairs, standing and lifting and carrying and holding (<10 lbs). (↑ Shortness of breath and pain in both lower limbs – secondary to heart condition)
- Personal self care: independent in all aspects.
- Basic housekeeping: laundry and basic housekeeping – periodic assistance from another person required.
- Shopping: independent for reading prices and labels, making appropriate choices and paying for purchases; periodic assistance from another person required for going to and from stores and takes significantly longer than typical for carrying purchases home (cannot carry heavy load).
- Meals: periodic assistance from another person required for meal planning; independent for food preparation, cooking and safe storage of food.
- Pay rent and bills: independent in all aspects
- Medications: independent in all aspects.
- Transportation: independent in all aspects.
- Social functioning: independent in all aspects – appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and able to secure assistance from others.

The area on the page where the GP would provide an assessment regarding impacts on the appellant's relationship with his immediate and extended social that works is unreadable.

Assistance required/provided

PR:

The GP reports that the appellant does not require any prostheses or aids for his impairment.

AR:

The GP notes that help for DLA is provided by family

The GP does not indicate that the appellant routinely uses any equipment or devices to compensate for his impairment.

The appellant does not have an assistance animal.

In his SR, the appellant writes:

"My disability impacts my daily life. Every day is a struggle as it is extremely painful to do every day activities. I have my daughter help me with laundry and housekeeping. Getting to the store for groceries will put me in bed for two or three days. It also impacts my mental state as I have always worked and been able to provide for myself. The medication prescribed makes my ability to concentrate less. Simple tasks such as making coffee or showering [are] difficult due to the pain. This is a chronic debilitating disability. I don't feel the need for motivation anymore is everything I try to do is painful."

~~In the Request for Reconsideration, the appellant writes that his chronic and debilitating condition will never go away. This has a great effect on his everyday activities. He has to rest after the simplest task. His life is no longer the same after working in the [skilled trade] industry for more than 40 years.~~

The appellant filed his Notice of Appeal on 20 March 2013. Under Reasons, the appellant writes:

"I don't know what to say about my condition. I can't walk more than 5 minutes without my dose of nitro for my heart (chest pain) or open a can of soup without help because of my arthritis. I don't know what else to say."

Attached to the notice of appeal is an angiographic report dated 30 November 2012 and copies of 2 x-ray images of his heart.

At the hearing the appellant stated that the scheduled angioplasty referred to in the PR had taken place in December 2012. He indicated he was on numerous medications, some for acid reflux, some for arthritis pain, and some for his heart condition. He noted that the GP who completed the physician report is not his cardiologist. He did however acknowledge that the GP has been treating him for at least a few years and that he sees her for his general physical wellbeing. He advised that his physician was not aware of his current chest pains and shortness of breath. He finds he has to take nitro on average once a day. He was not capable of working at his previous job and that he had lost his job as a result. He felt the angioplasty surgery went "ok" but noted that he would not be seeing his cardiologist until June. He stated that he also suffers from osteoarthritis. He noted that he has difficulty with any activity, and this difficulty has increased since December 2012 when the PR was completed. He has a hard time cooking, opening cans with a can opener, and reaching. He is assisted at home by his wife.

The ministry stood by its position at reconsideration.

The panel finds the additional information provided by the appellant in his Notice of Appeal and his testimony at the hearing is in support of information that was before the ministry on reconsideration. The reference to the appellant's arthritis explains the appellant's reference in his SR that "Simple tasks such as making coffee or showering [are] difficult due to the pain." The panel therefore admits this new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## 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 the appellant has a severe physical impairment and that in the opinion of a prescribed professional the appellant impairments

- (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 the appellant has a severe mental impairment and that he met the 2 other criteria in EAPWDA section 2(2) set out below.~~

The following section of the EAPWDA applies to this appeal:

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.

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.

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.

### Severity of impairment

For PWD designation, the legislation requires that a severe mental or physical impairment be established. The determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, including that of the appellant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's GP) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment." This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). A severe impairment requires the identified cause to have a significant impact on daily functioning.

### Physical impairment

The position of the ministry is that it is not satisfied that the information provided establishes a severe physical impairment. In the reconsideration decision, the ministry noted that there is no indication of whether the angioplasty surgery had taken place yet and what, if any, changes to the appellant's impairment resulted, nor is there any indication that angioplasty is no longer viable.

The position of the appellant is that he has a chronic, debilitating condition. The combination of his coronary artery disease and arthritis, and the resulting restrictions to his ability to function effectively on a daily basis, establish a severe physical impairment.

The panel notes that in the PR the GP stated the appellant was booked for an angioplasty. At the time of reconsideration, the ministry had no information as to whether or not the angioplasty had taken place, and if it had, what changes might have resulted in the appellant's medical condition and daily functioning. The panel finds it reasonable that, with possible ameliorative surgery in prospect, the ministry would expect an up-to-date assessment of the appellant's heart condition, rather than making a determination based on the uncertainty prevailing when the PR was completed. The panel also notes that there is no reference by the GP to the appellant's arthritis, despite the appellant being prescribed powerful pain medication for this condition. As noted above, the starting point for determining the severity of impairment is the evidence provided by a medical practitioner. The panel therefore cannot include the appellant's arthritis in assessing the reasonableness of the ministry's determination. Without a complete and up-to-date picture of the appellant's medical conditions and

their impact on daily functioning, the panel finds that the ministry reasonably determined that a severe physical impairment had not been established.

#### *Mental impairment*

In the reconsideration decision, the ministry noted that no mental impairment had been identified by the GP, though she did indicate the appellant has a significant deficit in cognitive and emotional functioning with respect to emotion and some moderate cognitive and emotional impacts on daily functioning. The position of the ministry was that the information provided did not establish a severe mental impairment.

The position of the appellant is that the information provided by the GP is sufficient to establish a severe mental impairment.

The panel notes that the GP has not diagnosed a mental health condition as an impairment. Although the GP did identify a significant deficit with cognitive and emotional functioning in the area of emotional disturbance (anxiety or depression), and some moderate cognitive and emotional impacts on daily functioning, the latter are not described or explained. The GP also does not report any restrictions with respect to social functioning. As no mental health condition has been diagnosed, and no major cognitive and emotional impacts on daily functioning reported, the panel finds that the ministry reasonably determined that a severe mental impairment had not been established.

#### *Significant restrictions in the ability to perform DLA*

The position of the ministry is that, while acknowledging that the appellant has certain limitations as a result of his medical condition, it finds that the information provided by the appellant's prescribed professional does not establish that impairment significantly restricts daily living activities continuously or periodically for extended periods.

The appellant's position is that, as reported by his GP, he needs help from his wife to manage ADLs and IADLs, his ability to move about indoors and outdoors is restricted by his ability to walk only one block and he needs help doing laundry and basic housekeeping and going to and from stores and carrying purchases home. His arthritis also makes it difficult for him to do the simplest things, such as opening a can of soup. All this points to his ability to manage DLA being significantly restricted on an ongoing basis.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion which has not been established, and be in the opinion of a prescribed professional. This does not mean that other evidence should not 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" that this criterion is met.

The panel notes that for one of the DLA listed in section 2(1)(a) of the EAPWDR, namely moving about indoors and outdoors, the GP has provided some detail: the appellant is able to walk less than one block with "↑ Shortness of breath and pain in both lower limbs – secondary to heart condition." For the other DLA in which some restrictions are noted -- basic housekeeping and shopping -- no further information is provided, including how often, for what specific tasks and to what extent periodic

help is required. While the GP has identified one DLA – moving about indoors and outdoors – which can be reasonably considered to be significantly restricted, with not enough information provided on those assessed as being periodically restricted and the majority of DLA assessed as independent, the panel finds the ministry reasonably determined that this criterion had not been met.

Whether help to perform DLA is required

The position of the ministry is that, as it had been established that DLA are not significantly restricted, it cannot be determined that significant help is required from other persons. The appellant does not require the use of an assistive device.

The appellant's position is simply that he relies on ongoing help from others, particularly from his wife and daughter.

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

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.