

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") May 21, 2013 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 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 consisting of a self-report which the Appellant chose not to complete, a physician's report ("PR") and an assessor's report ("AR") both completed on January 10, 2013 by the same doctor, who indicated that the Appellant has been a patient for 20 years and he had seen the Appellant between 2-10 times in the 12 months preceding the reports.
2. Appellant's request for reconsideration with written argument from his advocate, a radiology report dated April 12, 2000, a pain chart with a series of questions answered by the Appellant and a letter from the Appellant's advocate to the Appellant's doctor with 4 questions for the doctor to answer. The doctor answered those questions on April 24, 2013.
3. Letter from the Ministry to the Appellant's doctor asking the doctor to provide additional and/or clarifying information regarding the Appellant's ability to manage daily living activities. The doctor did not respond to this letter.

Diagnoses

In the PR, the Appellant's doctor diagnosed the Appellant with degenerative disc disease, obesity, diabetes, hypertension and osteoarthritis.

Physical Impairment

In the PR, the doctor described the severity of the Appellant's medical conditions as variable pain in the back and legs from degenerative disc disease, limits his mobility and tolerance for sitting. The doctor indicated that the Appellant had not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. Also, the Appellant does not require any prosthesis or aids for his impairment. The doctor wrote "chronic problems, slowly progressive" to describe the duration of the Appellant's impairment and noted it would likely last more than 2 years.

For functional skills, the doctor reported that the Appellant can walk unaided on a flat surface for less than 1 block, can climb 2-5 stairs unaided, can lift 5-15 lbs. can remain seated for less than 1 hour.

In the AR, the doctor reported that for mobility and physical ability, the Appellant needs:

- Periodic assistance with walking indoors (and takes significantly longer), with standing, with lifting, and with carrying and holding.
- Continuous assistance with walking outdoors (takes significantly longer) and with climbing stairs.

The doctor added "chronic pain limits mobility."

The following is a summary of the information in the 2000 radiology report about the Appellant's physical condition:

- Lumbar spine – no fracture or subluxation; mild degenerative lipping; no other abnormality identified.
- Hips and pelvis – no fracture, subluxation, significant loss of articular cartilage or other bone or joint abnormality.
- Knees – loss of articular cartilage at medial compartments bilaterally, changes associated with minimal marginal sclerosis and osteophyte formation; narrowed medial compartments consistent with loss of articular cartilage secondary to degenerative osteoarthritis.

The pain chart has the following information about the Appellant's pain:

- Is located in lower back, both knees, right wrist, elbow, shoulder, both ankles, right thumb.
- Is in ongoing, all the time, 365 days a year in cartilage, secondary to degenerative osteoarthritis; pain lasts 24 hours a day, indefinite, depending on weather. Sometimes he doesn't get too much sleep, is up at night to soak in the bathtub and sometimes he sleeps there until the water gets cold.
- Relief from pills, soak in the tub, osteoarthritis rubs.
- Feels like throbbing, dull, steady, sharp and on a scale of 0-5 is severe as distressing (3), horrible (4), discomforting (2) and excruciating (5).
- Affects activity so can't walk too far, affects getting good night sleep, can't travel in a vehicle too far.
- Additional symptoms include bad headaches, upset stomach; also noted sleep problems, appetite change, emotional upset; can only sleep a few hours; gets upset stomach when eating, stays home because he becomes a grouch.
- Indicated on body sketches pain is located in both wrists, both knees, both ankles, shoulders, lower back (L1 through L5, bony bridging at L4-5), enlarged prostate; added diabetic on pills.

In the advocate prepared questionnaire, in response to the question, whether in his opinion his patient has a severe physical impairment, the doctor wrote "multiple diagnoses: back pain, obesity, osteoarthritis combine to cause a severe impairment in [Appellant's] ability to do DLAs [daily living activities]".

Mental Impairment

The doctor provided no diagnosis of any mental health conditions and in the PR indicated that there are no significant deficits with cognitive and emotional function. In the AR, the doctor reported that the Appellant's ability to communicate in all areas is good. The doctor also wrote "N.A." [Not Applicable] in the section for reporting impacts to cognitive and emotional functioning and in the section for reporting assistance needed with aspects of social functioning.

Daily Living Activities

In the AR, the doctor reported that the Appellant is independent in all areas of personal care, basic housekeeping, meals, paying rent and bills, medications and transportation. The doctor did add that laundry and basic housekeeping "takes twice as long as "normal". For shopping, the doctor reported that the Appellant is independent reading prices/labels, making appropriate choices and paying for purchases. The Appellant needs periodic assistance with going to and from stores and with carrying purchases home, which also takes significantly longer. The doctor added "mobility limited but variable", but the doctor did not provide any information about the periodic assistance needed by the Appellant. The doctor added that the Appellant is "unable to work; some days unable to leave home".

In the advocate prepared questionnaire In response to the question whether in his opinion the Appellant is significantly restricted in his ability to perform daily living activities either continuously or periodically as a direct result of his impairment, the doctor wrote "yes, such activities take [Appellant] significantly (x2) longer than normal on a continuous basis".

Help with Daily Living Activities

- In the AR, the doctor wrote that the Appellant's sister helps with shopping and book work. The Appellant does not have an assistance animal. In the advocate prepared questionnaire, in response to the question whether he agrees that as a result of those restrictions, the

[Appellant] requires help to perform those activities, the doctor wrote: "sometimes requires help, always takes longer than normal."

At the hearing, the Appellant described his medical conditions and his pain as real bad in his lower back, both knees, both ankles, both wrists and generally as described in the pain chart. He said he can't go up or down stairs and is limited to managing 2 stairs. He also falls down often because his legs don't support him. The Appellant said he doesn't sleep more than 4 hours because he is in so much pain. He also gets really bad headaches, upset stomach and nausea. He takes strong medication for the pain. The Appellant said he drives, but if he can't park close to a store entrance it can take him more than half an hour to walk from the car to the store. He confirmed that he uses no assistive devices. The Appellant also said that some days he does not get out of bed and he stays home because others think he is a grouch. He stated that his sister help him before she moved away, but now he tries to do what he can on his own. It can take him 2 days to get his dishes done and he sits on a stool to do them.

The Appellant said that he works as an industrial security guard generally 4 days on and 4 days off, doing up to 12 hour shifts sitting in his vehicle. He said that he drags himself into his vehicle for work and when sitting in his vehicle he will lose feeling from his waist to his toes. Then he has to get out for relief and walk the length of the vehicle. Even though he is in pain, he still goes to work because that is his source of income.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant's oral testimony as information confirming details about his impairment and as being in support of the evidence that was before the Ministry at reconsideration.

At the hearing, 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 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 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 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 Appellant disagrees with the Ministry's interpretation of the doctor's reports. The Appellant also disagrees with how the Ministry described the level of the severity of his impairment in its reconsideration decision. He submits that he does have a severe physical impairment.

The Ministry's position is that it considered all of the information provided by the Appellant's doctor, including the Appellant's physical functioning abilities and limitations in managing daily living activities related to mobility. Based on that information, it is not satisfied that there is consistent evidence of a

severe physical impairment. The Ministry acknowledged that the Appellant has some functional limitations from his physical conditions; however, in its opinion those limitations are more in keeping with a moderate degree of impairment.

The Panel's Findings

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. What is important is evidence of how and the extent to which a medical condition restricts daily functioning. The EAPWDA provides that the determination of the severity of impairment is based on whether the Minister, taking into account all of the evidence including that of the Appellant, is satisfied that the Appellant has a severe impairment. That legislation is also clear that the fundamental basis for that assessment is the evidence from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's daily functioning.

In this case, both the Appellant and his doctor (the prescribed professional) provided information about medical conditions impacting the Appellant's physical functioning abilities; that is, degenerative disc disease, obesity and osteoarthritis. The Appellant described the pain he experiences as real bad and ongoing, affecting his sleep and his mobility. The Appellant, however, uses no assistive devices and relies only on pills, bath soaks and rubs. In the April 2013 questionnaire, the doctor wrote that the Appellant's multiple diagnoses of back pain, obesity and osteoarthritis combine to cause a severe impairment in the Appellant ability to do daily living activities. However, the doctor provided no details about any impacts to the Appellant's daily functioning.

In the PR, the doctor described the severity of the Appellant's impairment as variable pain in his back and legs from degenerative disc disease limiting his mobility and tolerance for sitting and that chronic pain limits mobility. The doctor also noted limitations in the Appellant's physical functioning ability such as being able to walk less than 1 block unaided and climb 2-5 stairs unaided. In the AR, the doctor reported that the Appellant needs periodic assistance walking indoors, standing, lifting, and carrying and holding. But the doctor provided no information about the extent or duration of any help needed and he reported no use of any assistive devices. The doctor noted that the Appellant needs continuous assistance walking outdoors and climbing stairs, but did not add what kind of assistance.

As for daily living activities requiring physical functioning abilities, the doctor reported that the Appellant independently manages all aspects of personal care, basic housekeeping (takes twice as long as normal), meal preparation and transportation. The doctor added only that mobility is limited but variable. In the April 2013 questionnaire, the doctor stated that the Appellant sometimes requires help and always takes longer than normal, but again provided no details. The Appellant also indicated that he manages daily tasks on his own, although they take longer to do. He also drives to the store and walks to the entrance, although the walk can take time. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment, but rather that his physical limitations are more in keeping with a moderate degree of impairment.

Severe Mental Impairment

The Panel finds that the Appellant's doctor provided no diagnosis of a mental health condition and no evidence of any significant deficits in the Appellant's cognitive and emotional functioning. The Appellant also provided no evidence or submissions about any mental impairment. Therefore, the

Panel finds that the Ministry reasonably determined that the evidence does not support any mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that his ability to manage daily living activities is significantly restricted by his severe physical impairment. Several tasks take twice as long as normal. For example, it can take him more than half an hour to walk from his vehicle to a store entrance and up to 2 days to get his dishes done.

The Ministry's position is that while the Appellant's functional limitations directly restrict his ability to perform some aspects of his daily living activities and several tasks take twice as long as normal, the doctor indicated that the majority of daily living activities (26 of 28) are performed independently. Therefore, the Ministry determined that the information provided does not establish that the Appellant's impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that the Appellant's severe impairment directly and significantly restricts his daily living activities. The Appellant's doctor is the prescribed professional. The doctor reported that chronic pain limits the Appellant's mobility and that he requires periodic assistance with walking indoors, standing, lifting and carrying and holding, as well as continuous assistance with walking outdoors and climbing stairs. But the doctor provided no details about the extent or type of assistance needed. Also, the doctor reported that the Appellant independently manages all areas of personal care, basic housekeeping, shopping (except for going to/from stores and carrying purchases home), meals, paying rent and bills, medications and transportation; that is, the majority of daily living activities. In the questionnaire, the only detail the doctor provided was the statement that the Appellant takes significantly longer (x2) than normal on a continuous basis. Therefore based on the evidence from the prescribed professional, the Appellant's doctor, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant's impairment directly and significantly restricts his ability to manage daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submits that he needs help with his daily living activities, help he used to get from his sister until she moved away.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons.

Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional to confirm that because of his restrictions the Appellant requires help with his daily living activities. In this case, the doctor reported that the Appellant does not use any assistive devices, any assistance animals, only that he sometimes requires help and that his sister helps with shopping and book work. The doctor provided no other details about help that the Appellant has or needs. Therefore, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant

needs significant help to perform daily living activities and also because direct and significant restrictions in the Appellant's ability to perform daily living activities were not established, it cannot be determined that the Appellant needs help to perform those activities.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence. Therefore the Panel confirms that decision.