

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) July 9, 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. Based on the information provided, 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 in which the Appellant indicated that he chose not to complete it, but he did list pending medical procedures and the doctors he will be seeing and has seen.
- A physician's report ("PR1") completed on March 19, 2013 by the Appellant's family doctor who indicated that the Appellant has been his patient since 2004 and he had seen the Appellant between 2-10 times in the 12 months preceding the report.
- A second physician's report ("PR2") and an assessor's report ("AR") completed on February 28, 2013 by a psychiatrist who indicated that he has known the Appellant for 3 years and he has seen the Appellant between 2-10 times in the 12 months preceding the report.

2. Letter dated February 25, 2013 from a neurologist to the family doctor regarding a review of the Appellant's back and hip pain, as described below.

3. Copy of a prescription to the Appellant, dated March 11, 2013, for 2 medications authorized by his psychiatrist.

4. Letter dated November 21, 2011 from an osteopathic physician to the family doctor.

5. Copy of an MRI report of the Appellant's lumbar spine, dated May 22, 2012 for the family doctor.

6. Appellant's request for reconsideration with a letter dated June 21, 2013 from the psychiatrist who completed PR2 and the AR. The Appellant also submitted a statement describing his illnesses and how they affect him, detailed below.

For this appeal, the Appellant submitted written argument which is summarized in Part F of this decision. He also submitted information about his medical conditions, a review of the information provided with his PWD application and with his request for reconsideration, and the following documents:

1. Pain Service Consultation report dated June 28, 2013.

2. Letter dated August 2, 2013 from the Appellant's psychiatrist to the Ministry.

3. Lab/imaging report with illegible headings, dates and purpose, describing the Appellant's spinal condition.

4. Copies of prescriptions dated July 31, 2013 and May 21, 2013 authorized by his psychiatrist.

Diagnoses

In PR1, the family doctor diagnosed the Appellant with bipolar affective disorder onset 2010 and spinal disc disease/hypo plastic facet joints onset 2010. In PR2, the psychiatrist diagnosed the Appellant with bipolar II disorder onset in adolescence and with congenital spinal abnormality – facet hypo plastic - lifetime. The psychiatrist added that the spinal abnormality was being assessed by another doctor and neurologist and that he would assess only the mental disorder.

Mental Impairment

In PR1, the family doctor indicated that:

- The bipolar affective disorder is being treated with medication and followed by his psychiatrist, and is currently affecting his ability to work.
- The Appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance (depression, anxiety etc.) and motivation (loss of initiative or interest).

In PR2, the psychiatrist described the bipolar disorder II as "severe, being stabilized on medication – produces multiple depressive episodes, interspersed with hypomanic episodes. Extremely disrupted

in terms of work and interpersonal relationships”, “lifetime, cannot be cured, only alleviated”. The psychiatrist also 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 medication/treatments is “lifetime”.
- The Appellant requires no prostheses or aids for his impairment.
- The Appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and impulse control.

In the AR, the psychiatrist reported that:

- The Appellant’s ability to communicate in all areas (speaking, reading, writing, and hearing) is good.
- The degree to which the Appellant’s impairment impacts his cognitive and emotional functioning is as follows: major impact to emotion, moderate impact to impulse control and motivation, minimal impact to insight/judgment and to executive, and no impact to bodily functions, to consciousness, to attention/concentration, to memory, to motor activity, to language, to psychotic symptoms, to other neuropsychological problems and to other emotional or mental problems.
- The Appellant “suffers from depression, hypomania & anxiety, occasional anger outbursts, lack of motivation if depressed”.
- The Appellant lost his job because of behavior; mood swings make relationships difficult & transient; his back problems are producing increasing pain and impact his emotional stability.

With his request for reconsideration, the Appellant wrote that:

- He is bipolar and has constant anxiety, is subject to manic depression which greatly affected his ability to work.
- Although he is medicated for these mental illnesses, it does not nullify them; over the years this caused chronic absenteeism from work and employer/coworker resentment leading to more stress, anxiety and manic depression so that he resigned from his previous career.
- When he tried to find employment this was always the reason for rejection – his references have to be truthful about his chronic absenteeism/co-worker/boss conflicts.
- His mental illnesses, along with previous alcoholism, all but ruined his previous career and his ability to find new employment, and given the relatively small network of employers for his career, it appeared the word was out on his attendance woes and conflicts.

In the June 21, 2013 letter, the psychiatrist wrote that:

- The Appellant has cognitive and emotional functioning problems, being emotionally disturbed and with poor impulse control.
- The Appellant is on regular medication but it does not abate emotional dysfunction, merely modifies it.
- Regarding the section of the AR where he indicated that the majority of the Appellant’s emotional and cognitive functioning was not impacted, that was perhaps because of the generalized nature of the questions asked.
- It is clear that the Appellant’s bipolar disorder does in fact make a big difference to the quality of his life and his ability to interact adequately with people, to the point of what the psychiatrist would feel is disability.

- He feels that the Appellant is in fact disabled, both physically and emotionally, and the PWD designation is appropriate.

The psychiatrist stated in his August 2, 2013 letter that:

- He disagrees with the Ministry's summation that the Appellant has no severe mental impairment.
- He sees the Appellant on a regular basis for medication management, which unfortunately does not totally assist him; he gets several days running of severe disability when he can do virtually nothing constructive in his life; the Appellant does not have the resources to summon external help, has no significant friendship patterns.
- The Appellant has poor anger control and tries to be as active as he can to control his emotional instability, using alcohol in the past as a coping mechanism.
- The Appellant's attention span and concentration ability are very limited and in addition he has a high level of anxiety; all factors making it very difficult for the Appellant to interact with others or to contemplate any employment.
- Anger is just below the surface and the Appellant finds it difficult to control this, and others are often afraid of him because of this.
- He would submit that the Appellant has sufficient emotional disability, since on a daily basis his ability to interact with others is very limited due to both the cognitive and emotional dysfunction.

In his appeal submission the Appellant stated that:

- He has been seeing his psychiatrist on a three-week basis.
- His debilitating pain adversely affects his mental health on a daily basis; the stress of living in poverty on a daily basis greatly affects on dignity, leading to further physical and mental distress.
- His continuous battle with significant pain leads to worsening or manic depression, which has left him suicidal in the recent past.
- He has spent days alone in bed being depressed and in pain, and there is nothing he can do about it.
- He has been prescribed bipolar medication which adversely affects his memory and his ability to concentrate to the point he discontinued the drug in 2012; but later decided the drugs benefit on his mood (controlling anger outbursts, etc.) outweighed this.
- His bi-polar, anxiety and manic depression are here to stay; he is forever in a battle of will against these debilitating conditions.

Physical Impairment

In PR1, the family doctor wrote the following about the Appellant' degenerative disc disease and facet joint disease – "chronic back pain, limited physical abilities, limited lifting, walking, limited sitting". For physical functional skills this doctor reported that the Appellant can walk unaided on a flat surface 1-2 blocks, can climb 5+ steps unaided, can lift 2-7 kg. and has no limitations remaining seated. The doctor added that the Appellant's "back problems are severe and may require surgery in the future. He will likely not be able to function at work involving lifting.

The February 25, 2013 letter from a neurologist to the family doctor provided the following information about a review of the Appellant for back and hip pain:

- The Appellant reported having “hypo plastic facet joints and “disc issues in the low back for a number of years”.
- In 2004, the Appellant noted numbness and tingling on the right side of his body; over the last 2 years had localized numbness over the right thigh, shooting pain over the right leg and chronic low back pain; involuntary muscle spasms of the right leg and occasionally the right side.
- The Appellant had an MRI of the lumbar spine and has hypo plastic facet joints; is following with an osteopathic physician since 2010; has a history of drinking and taking drugs, but has had no alcohol for 2 years; has a lot of pain and is thus unable to work.
- MRI of lumbar spine on May 22, 2012 comments on mild to moderate facet degeneration at L4 and L5, as well as L5-S1 with moderate disc space narrowing with no focal disc herniation; there is mild asymmetry and disc bulge towards the right at L5-S1.
- Neurological examination reveals an alert and oriented individual; cranial nerves are normal.
- Strength is 5/5 over the upper and lower extremities; deep tendon reflexes are 2+, symmetrical and toes are down-going; gait is not ataxic and there is no spasticity of gait.
- Recommended MRI of the cervical and thoracic spine; referred the Appellant to another doctor for a physiatrist opinion; Appellant would benefit by physiotherapy and/or acupuncture; is unable to work given his present symptoms.

In the June 21, 2013 letter, the psychiatrist wrote that:

- With regard to the congenital spinal abnormality, the Appellant is in considerable pain on a daily basis.
- While the Appellant can do the minimal physical requirements the Ministry uses as criteria, there is in fact a definite impairment in his ability to function physically.

With his request for reconsideration, the Appellant wrote that:

- He suffers from chronic-acute pain in his lower back to mid back, right hip and down the inside of his right thigh.
- Walking a few blocks sees this pain flare up, or standing or sitting for extended period.
- He is in constant pain, but is working hard to alleviate the pain to no avail, leaving him depressed and suicidal in the recent past; the pain is exhausting and depressing greatly affecting his mental health.
- He is working with a pain clinic to try to get his pain to a manageable level, but he was informed it would take 5 weeks to get a report from the pain clinic doctor.
- It is the opinion of his physicians that he will never completely alleviate this pain, merely improve on its levels due to a birth defect referred to as hypo-plastic facet joints/disc compression in his lower to mid spine causing nerve compression.
- This condition causes consistent pain in his mid to lower back, right hip and sciatic down the inside of his right thigh.
- He's lost 30 pounds in the last 4 months due to eating less because of limited food and the weight loss has not help alleviate his pain; the pain has proved debilitating in the recent past to present, but he is doing his best to manage and alleviate it with minimal benefit.

In his appeal submission, the Appellant stated that:

- He has been fully engaged in programs offered by a pain clinic since early July; despite his best efforts his pain continues to be debilitating and managing it has proven a full time effort.

- He has seen his osteopathic doctor again but that doctor has not generated a new report, but will do so after a thoracic spine MRI in October; and may indicate that the Appellant should be referred to a neurosurgeon for possible surgery, surgery which may not alleviate the pain.
- He struggles with significant pain on a daily basis, which varies at times; sometimes he has a good pain day, but mostly he is in a continuous battle with it.
- It is exhausting being in constant pain and trying to alleviate it; it is a full time battle.
- He has been prescribed medication to deal with the chronic pain and the medication does restrict him from performing daily activities.
- He suffered many injuries in his life from various sports and accidents.
- He is doing his best to alleviate his pain with programs at the pain clinic, acupuncture and natural remedies for pain management; narcotics would worsen other conditions.

The pain clinic report indicates that:

- The Appellant reported persistent pain localized to the center of his spine, extending from the lower thoracic area to the lumbosacral area; persistent right groin anteromedial thigh pain.
- Generally the pain is at 4/10 level, but sometimes flares to 8/10; aggravating factors include standing for long periods, bending, walking, cold damp weather, lifting maneuvers.
- He has had back pain since 18, but symptoms have increased in intensity over the past 18 months.
- Imaging information showed a hypo plastic left pedicle of the vertebral body; slight decrease in disk space at the L4-5 level; slight scoliosis associated with asymmetry in the posterior facts; some facet degeneration at L4-5 and L5-S1 and a small central disk bulge at L5-S1.
- He takes medication for the bipolar disorder and anxiety.
- He is seeing an acupuncturist, but has limited funds for access to the medical system.
- The Appellant has a normal gait, but reported some right groin/thigh discomfort while walking; mild restriction on lateral bending to the right and left, and he finds extension of the lumbar spine uncomfortable; can flex forward easily; can toe and heel walk; no focal neurologic deficit.
- The report cites – impression as “chronic mechanical lumbar pain”
- The Appellant is deconditioned, and improving conditioning and fitness would have a significant effect on alleviating his present symptoms.

Daily Living Activities

In PR1, the family doctor answered “yes” to the question whether the Appellant’s impairment directly restricts his ability to perform daily living activities; however, that doctor also reported that personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning were not restricted.

In the AR, the psychiatrist reported that the Appellant is independent in his ability to manage all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation, and social functioning, except for interacting appropriately with others for which the Appellant needs periodic assistance – “varies with mood”. The Appellant also has marginal functioning with his immediate and extended social networks.

In the June 21, 2013 letter, the psychiatrist wrote that the pain per se makes it difficult for the Appellant to concentrate and to perform usual daily tasks, and is productive of continued depression.

The Appellant wrote that:

- He fights through pain to maintain his daily living activities.
- The pain definitely restricts him from performing daily tasks.
- It saddens him greatly to fight through significant pain just to do some dishes or go to the food bank or do any other household task; he has no one to help with these tasks.
- He spends days in bed being depressed and in pain, and he tries his best to maintain his home regardless of the pain and depression.

Help with Daily Living Activities

In the AR, the psychiatrist reported that the Appellant has assistance from friends – “has a few friends who are supportive”. The Appellant does not have an assistance animal. The family doctor and psychiatrist did not report the use of any prosthesis or assistive aids. The Appellant also stated that he has no one to help with dishes, going to the food bank or doing any other household tasks.

For this appeal, the Ministry provided no comments regarding the Appellant’s written appeal submissions and additional documentary information. It relied on its reconsideration decision.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information submitted by the Appellant in his written submission for this appeal, about his medical conditions and their effects, as well as, the additional documents listed and described above, because they provide additional details about his conditions and therefore are in support of the evidence that was before the Ministry at reconsideration.

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 Appellant submitted a great deal of information about his conditions in his written submissions, in a physician's report from his family doctor, a physician's report and an assessor's report completed by his psychiatrist, two additional letters from his psychiatrist, copies of prescriptions to verify the medications he takes, copies of imaging reports regarding his physical health conditions and additional reports from other medical professionals. Even though it may not refer to some of that information specifically in its findings and decision below, the Panel has considered all the relevant information that was in the record before the Ministry at reconsideration as well as the information admitted at the appeal hearing. 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 Mental Impairment

The Appellant submitted that the Ministry does not acknowledge the severity of his mental and

physical impairments and disabilities. Nor does the Ministry acknowledge the affirming diagnoses from his clinicians and supporting evidence. The Appellant submitted that his bipolar condition, anxiety and manic depression are here to stay. The Appellant referred to the evidence from medical professionals, including his psychiatrist's statement that it is clear that his bipolar disorder does in fact make a big difference to the quality of his life and his ability to interact adequately with people. The Appellant submitted that his psychiatrist feels that he is disabled. The Appellant also stated that his disabilities have led to his lack of employment which is an essential reason why he applied for PWD designation. He cannot find an employer who will deal with his bipolar disorder, depression, anxiety and pain. He submitted that he is impoverished because of his conditions, his literal survival and the ability to maintain a place to live is at stake for him.

In its reconsideration decision, the Ministry wrote that it considered the information in the Appellant's PWD application, as well as the June 21, 2013 letter from the psychiatrist. The Ministry reviewed the diagnoses described by the psychiatrist and also considered the psychiatrist's reports of the Appellant's mental functioning, the areas of impact to cognitive and emotional functioning, and the Appellant's ability to independently manage all daily living activities, except for the need for periodic assistance with interacting appropriately with others.

The Ministry acknowledges that the Appellant's impairments may impact mental functioning, but it pointed out that it relies on medical opinions to confirm that the Appellant's impairments impact his ability to manage his daily living activities. The Ministry also noted that the psychiatrist reported that the Appellant's condition is extremely disruptive in terms of work and interpersonal relations; however, the Ministry pointed out that employability is not a component of a PWD designation. Therefore, based on the assessment from the Appellant's medical professionals, the Ministry was not satisfied that the information provided establishes a severe mental impairment as required for PWD designation.

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. Moreover, 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, including his ability to manage the daily living activities listed in section 2(1) of the EAPWDR.

Both the family doctor and the psychiatrist diagnosed the Appellant with bipolar disorder, which the psychiatrist indicated was onset in adolescence. In the AR, the psychiatrist wrote that the Appellant "suffers from depression, hypomania & anxiety, occasional anger outbursts, lack of motivation if depressed". The Appellant described how he spends days in bed being depressed and there is nothing he can do about it. The Appellant also wrote that his bi-polar, anxiety and manic depression are here to stay and he is forever in a battle of will against these debilitating conditions.

The psychiatrist also confirmed that the Appellant has cognitive and emotional functioning problems, and is emotionally disturbed with poor impulse control. With respect to his report in the AR, that the majority of the Appellant's emotional and cognitive functioning was not impacted, the psychiatrist

stated that this was perhaps because of the generalized nature of the questions asked. The psychiatrist wrote that it is clear that the Appellant's bipolar disorder does in fact make a big difference to the quality of his life and his ability to interact adequately with people to the point that the psychiatrist feels this is disability.

The Panel acknowledges that the medical evidence and the Appellant's descriptions of his condition demonstrate that the Appellant has serious medical conditions, requiring ongoing consultations with his psychiatrist and medications for these conditions. However, for the purposes of PWD designation, the legislation is clear that prescribed professionals, such as the family doctor and psychiatrist in this case, must provide information regarding how the Appellant's impairments impact his daily functioning, including his ability to manage the daily living activities listed in section 2(1) of the EAPWDR. In this case, the family doctor and the psychiatrist provided few details about such impacts.

The family doctor indicated no restrictions to daily living activities from the Appellant's mental health conditions. As for the information from the psychiatrist, he reported impacts to cognitive and emotional functioning, but then provided few details in PR2 or the AR about how such impacts affect the Appellant's daily functioning. In fact, the psychiatrist reported that the Appellant independently manages all daily living activities, including those requiring some degree of mental functioning such as personal self-care, managing medications, managing finances and even meal preparation. The Panel notes that the psychiatrist in his reports and letters focused mainly on the Appellant's difficulties in managing relationships with others and impacts to social functioning. In the August 2013 letter, the most recent information about the Appellant's condition, the psychiatrist wrote that the Appellant's attention span and concentration ability are very limited. In addition he has a high level of anxiety, all factors making it very difficult for the Appellant to interact with others or to contemplate any employment. The psychiatrist submitted that the Appellant has sufficient emotional disability, since on a daily basis his ability to interact with others is very limited due to both the cognitive and emotional dysfunction. Again, the Panel notes that the psychiatrist's assessment is limited to restrictions to the Appellant's social functioning, which is only one of the activities defined in section 2(1) of the EAPWDR.

Both the Appellant and psychiatrist also seemed to focus on the Appellant's inability to work or even look for work because of his mental health conditions. The psychiatrist indicated that the Appellant lost his job because of his behavior and his mood swings make relationships difficult and transient. The Panel points out that the ability to work or even to look for work is not a criterion for PWD designation. The EAPWDA, cited above, spells out the requirements for PWD designation and employability is not a factor.

The Panel finds that, when all of the evidence from the Appellant together with that of the medical professionals is considered, the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe mental impairment as required by the applicable legislation for PWD designation.

Severe Physical Impairment

The Appellant submitted that the medical reports and doctors' opinions confirm that he has a severe physical impairment. He cited the information from his physician, from the neurologist and the osteopathic doctor as confirming his chronic, daily pain which is caused by congenital spine defects.

The Appellant also provided the pain clinic consultation as well as imaging reports to confirm the spinal condition that he submits is the cause of his chronic and debilitating pain. The Appellant's position is that his continuous battle with significant pain leads to worsening or manic depression, which has left him suicidal in the recent past. He has spent days alone in bed being depressed and in pain, and there is nothing he can do about it. The Appellant also submitted that because of the chronic pain he is unable to work or cope with his daily tasks. He wrote that it saddens him greatly to fight through significant pain just to do some dishes or go to the food bank or do any other household task; he has no one to help with these tasks. He spends days in bed being depressed and in pain, and he tries his best to maintain his home regardless of the pain and depression.

The Ministry reviewed the physical assessments provided by the Appellant's family doctor, and noted the level of physical functioning reported. The Ministry acknowledged that the Appellant's physical impairments may impact his functional abilities, but determined that evidence of a severe physical impairment has not been provided by the Appellant's physician.

The Panel's Findings

The Appellant described how the chronic pain in his back and right side cause him to spend days in bed and affect his depression. The Appellant submitted the cause has been attributed to a congenital defect. The Appellant's family doctor diagnosed the Appellant with degenerative disc disease and facet joint disease, adding the following comments about the limitations from that condition: "chronic back pain, limited physical abilities, limited lifting, walking, limited sitting". For physical functional skills, however, this doctor reported that the Appellant can walk unaided on a flat surface 1-2 blocks, can climb 5+ steps unaided, can lift 2-7 kg. and has no limitations remaining seated. The doctor added that the Appellant's "back problems are severe and may require surgery in the future. He will likely not be able to function at work involving lifting" The family doctor reported no other restrictions to any daily living activities which may require physical functioning, such as personal care, basic housekeeping, shopping or meal preparation. In the AR, the psychiatrist also reported that the Appellant independently manages all daily living activities including those which may require physical functioning.

In his February 2013 letter, the neurologist reviewed the Appellant's symptoms, such as numbness on the right side of the body and chronic low back pain. The neurologist wrote that the Appellant is unable to work given his present symptoms, but provided no other information about impairments to daily functioning. The psychiatrist reported that the Appellant is in considerable pain on a daily basis, and that while the Appellant can do the minimal physical requirements the Ministry uses as criteria, there is in fact a definite impairment in the Appellant's ability to function physically. The Panel notes, however, that the psychiatrist provided no details about this definite impairment.

In the report from the pain clinic consultation, dated June 28, 2013, the consulting doctor reviewed the Appellant's history of chronic pain and indicated he spent a considerable period of time reviewing his assessment with the Appellant. That doctor noted in part that the Appellant appears deconditioned, has a normal gait but reports some discomfort while walking, there is a mild restriction on lateral bending to the right and left, finds extension of the lumbar spine uncomfortable, can flex forward easily, and can toe and heel walk. This doctor encouraged the Appellant to attend the pain program for a long term plan for managing his symptoms. The doctor also indicated a need for the Appellant to focus on improving his condition and fitness which would have a significant effect on alleviating the Appellant's present symptoms.

The Panel finds that the evidence from the Appellant and the medical professionals establishes that the Appellant experiences chronic back pain and pain along his right side. According to the Appellant, this causes him to spend days alone in bed being depressed, unable to work or to cope with his daily tasks. The Panel finds, however, that the physical restrictions described by the Appellant have not been confirmed by any of the medical professionals. In fact, neither the Appellant's family physician nor the psychiatrist reported any restrictions to daily activities requiring physical functioning. The family doctor reported only some limitations in physical mobility, such as walking 1-2 blocks. The Panel also notes that the doctor who completed the pain consultation indicated that if the Appellant focused on improving his condition and fitness, there would be a significant effect on alleviating his symptoms. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the evidence provided does not establish that the Appellant has a severe physical impairment.

Restrictions to Daily Living Activities

The Appellant's position is that, on a daily basis, he has difficulty performing daily tasks. He has to fight through significant pain just to do some dishes or go to the food bank or do any other household task, and he has no one to help with these tasks. The Appellant submitted that he spends days in bed being depressed and in pain, and he tries his best to maintain his home regardless of the pain and depression. To support his position the Appellant submitted the reports from his doctors, including the June 2013 letter from the psychiatrist who wrote that the pain per se makes it difficult for the Appellant to concentrate and to perform usual daily tasks.

The Ministry noted that in the PWD application, the Appellant's psychiatrist indicated that he can independently manage all of his daily living activities. The family doctor indicated that the Appellant has not been prescribed any medication and/or treatments that would interfere with his ability to perform daily living activities and also reported that the Appellant is not restricted in his ability to manage his daily living activities. The Ministry did note that the Appellant's back problems are severe and he is not likely to be able to function at work involving lifting, although the Appellant can lift 5-15 lbs. The Ministry noted that employability is not a component of a PWD designation and according to the assessment of the Appellant's ability to manage his daily living activities provided by the family physician and the psychiatrist, there is not enough evidence to establish that his impairments directly and significantly restrict daily living activities 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 an applicant's severe impairment directly and significantly restricts his or her daily living activities continuously or periodically for extended periods. In this case, the Appellant's family physician and his psychiatrist are the prescribed professionals. The definition of "daily living activities" for the purposes of PWD designation is found in section 2(1) of the EAPWDR. Those activities, cited above, are also listed in the physician's report part of the PWD application and with additional details in the assessor's report part of the PWD application. Therefore, a prescribed professional completing any of these forms has the opportunity to directly indicate which if any daily living activities are significantly restricted by the Appellant's impairments, continuously or periodically for extended periods. The prescribed professional can also report what help the Appellant may need with the activities.

In PR1, the family doctor answered "yes" to the question whether the Appellant's impairment directly

restricts his ability to perform daily living activities; however, that doctor also indicated that the Appellant was not restricted in managing his personal care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances and social functioning.

The Appellant's psychiatrist completed a physician's report and an assessor's report. In that assessor's report, the psychiatrist indicated that the Appellant is independent in his ability to manage all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation, management of finances and all areas of social functioning, except for interacting appropriately with others for which he needs periodic assistance because it "varies with mood". In the June, 2013 letter, the psychiatrist wrote that pain makes it difficult for the Appellant to concentrate and perform daily tasks, but the psychiatrist did not indicate that the Appellant needs assistance with any of the daily living activities and the psychiatrist provided no details as to which daily tasks the Appellant had difficulty with. In the August 2013 letter, the psychiatrist wrote that the Appellant's medication management does not totally assist him and he gets several days running of severe disability when he can do "virtually nothing constructive in his life". The Panel notes that the psychiatrist provides a description of only several days of restrictions but no details about which specific daily activities the Appellant is unable to manage independently.

The psychiatrist also indicated that the Appellant does not have the resources to summon external help and has no significant friendship patterns. It is not clear to the Panel whether the psychiatrist meant that the Appellant did not have financial resources to get help or lacked friends or family who could help. The psychiatrist wrote that the Appellant's conditions make it very difficult for the Appellant to interact with others or to contemplate any employment. The psychiatrist submitted that the Appellant has sufficient emotional disability, since on a daily basis his ability to interact with others is very limited due to both cognitive and emotional dysfunction. The Panel finds that the psychiatrist was addressing only the Appellant's social functioning abilities, but not how he manages all of his other daily living activities.

The Panel also notes that the psychiatrist, as well as the Appellant, appear to be focused on the Appellant's employability. The Panel points to the criteria for PWD designation set out in section 2(2) of the EAPWDA and notes that employability is not a criterion for PWD designation. However, how an applicant's severe impairment significantly restricts the daily living activities defined in the PWD regulation is. The Panel finds that Ministry reasonably determined that the Appellant's family doctor and psychiatrist provided assessments that the Appellant independently manages all of the daily living activities listed in PR1, PR2, the AR and in section 2(1) of the EAPWDR. Therefore, the Panel further finds that the Ministry reasonably determined that there is not enough evidence to establish that the Appellant's impairments directly and significantly restrict daily living activities continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant's position is that he is alone, cannot afford any help on days when his depression and pain leave him bedridden. He does need help with daily living tasks, but has no one to help him. The only way for him to meet the conditions of the PWD criteria would be to be hospitalized. Also, the Appellant's psychiatrist reported that he needs periodic assistance with interacting with others. The Appellant also submitted that he is using the programs at the pain clinic and other remedies; however, his resources are limited.

The Ministry's position is that, based on the reports from the Appellant's family physician and psychiatrist, the Appellant does not need an assistive device, the significant help of another person or the services of an assistance animal. Also, 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. The Panel finds that based on the reports from the Appellant's family doctor and psychiatrist, the Ministry reasonably determined that Appellant does not need any assistance devices or an assistance animal.

As to whether the Appellant needs significant help from another person, the only information provided by one of the prescribed professionals, the psychiatrist, is that the Appellant has help from a few friends who are supportive. But the psychiatrist provided no details about what kind of help is provided or how often. Also, the Panel notes that neither the family doctor nor the psychiatrist explained what kind of help others could provide to the Appellant. Therefore, based on the reports from the family doctor and the psychiatrist, 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. Also, because direct and significant restrictions in the Appellant's ability to perform daily living activities were not established, the Ministry reasonably found that it could not determine 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