

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 23 October 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 mental or physical impairment that 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 determined that the appellant satisfied the other 2 criteria: 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 30 May 2013. The Application contained:
 - A Physician Report (PR) dated 27 May 2013, completed by the appellant's general practitioner (GP) who has known the appellant since June 2010 and has seen him 11 or more times in the past year.
 - An Assessor Report (AR) dated 23 May 2013, completed by a registered social worker (RSW) who has known the appellant for 2 months and seen him 2-10 times
 - A Self Report (SR) completed by the appellant.

2. The appellant's Request for Reconsideration, dated 10 September 2013.

In the PR, the GP diagnoses the appellant's impairment as early childhood growth hormone deficiency, osteoporosis and anxiety disorder.

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:
Under health history, the GP writes: "Since age of five years, he was diagnosed with growth hormone deficiency & conventional treatment never helped him, ending with compromised height and weight. He remains under care of an endocrinologist. Now being diagnosed with osteoporosis. He is also suffering from anxiety disorder due to ongoing above medical issues." In indicating that the appellant's impairment is likely to continue for two years or more, the GP states that the growth hormone deficiency is unlikely to improve at this stage of life and that osteoporosis needs continuous treatment and monitoring.

The GP gives the appellant's height and weight as relevant: [under 5 ft. and less than 80 lbs.]

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. The GP also indicates that the appellant does not require any prostheses or aids for his impairment.

As to functional skills, the GP reports that the appellant can walk 2 to 4 blocks unaided, climb 5+ steps, lift under 5 lbs. and provides no assessment with respect to the limitations regarding remaining seated.

AR:
The RSW lists the appellant's physical impairment that impacts his ability to manage DLA as osteoporosis.

The RSW also comments: "Due to [the appellant's] severe pain in his neck, hips and left knee it has

impaired him to complete daily activities.... Also he has to stay in bed because his pain is acute; he must stay there until his pain meds have taken the edge off."

Mental impairment

PR:

the GP indicates that the appellant has no difficulties with communication

The GP assesses the appellant with significant deficits with cognitive and emotional function in the area of emotional disturbance.

The GP comments: "ongoing osteoporosis, generalized aches and pains. His anxiety and depression."

AR:

The RSW describes the appellant's mental impairment impacting his ability to manage DLA as "anxiety disorder."

The RSW also comments: "There are many days where he has stayed in bed longer because of feeling depressed and anxious."

Ability to perform DLA

PR:

The GP reports that the appellant is restricted in his ability to perform the following DLA on a periodic basis: basic housework and daily shopping. The GP indicates that there are no restrictions on the appellant's ability to perform the DLA of personal self care, meal preparation, management of medications, mobility inside and outside the home, use of transportation, management of finances and social functioning. The GP explains "periodic" to mean that to carry his groceries and do his housework he needs another person to help him. In explaining what assistance the appellant needs with DLA, the GP writes: "He does need personal help for his household work & shopping, few days a week."

AR:

The RSW reports that the appellant lives alone.

The RSW assesses the appellant's ability to communicate as good for speaking, reading writing and hearing.

Regarding mobility and physical ability, the RSW provides the following assessments (her comments in parenthesis):

- walking indoors – takes significantly longer than typical (2x as slow due to pain in hips, knees, and back).
- walking outdoors – takes significantly longer than typical (4x slower due to pain in hips, knees and back).
- climbing stairs – takes significantly longer than typical (2x as slow; he needs to do one step at a time, most hold onto rails due to pain and weakness in left knee).

- standing – independent.
- lifting – takes significantly longer than typical (he tries to avoid lifting due to major pain in back).
- carrying and holding – periodic assistance from another person required (Can only carry light weight. He depends on others to do this task due to pain and weakness in back and left side).

The RSW comments that the appellant struggles with these tasks when he needs assistance or avoids tasks altogether because of pain and weakness in hips, back and left knee.

As to cognitive and emotional functioning, the RSW assesses the appellant's mental impairment as having a moderate impact in the following areas: bodily functions (sleep disturbance: pain in body), emotion (anxiety), attention/concentration (lack of sleep and meds), and motivation (feeling depressed). A minimal impact is assessed for consciousness (due to lack of sleep), executive (anxiety gets in the way), and memory (two to lack of sleep). No impact is assessed for impulse control, insight and judgment, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. The RSW comments that the appellant lacks motivation because of his depression; also on many days he feels tired and fuzzy due to the medication he takes and his lack of sleep due to his severe pain.

The RSW assesses the assistance required for managing DLA as follows (the RSW's comments in parentheses):

- personal care – takes significantly longer than typical for dressing (2x slower, struggles with pain due to pain in back, hips and knees), bathing (2x slower due to pain, struggles with bending and twisting in shower), and transfers in/out of bed (2x slower due to pain in neck, knee, hips); independent and takes significantly longer than typical for regulating diet (lacks motivation to feed himself because of feeling depressed and it is painful to stand); independent for grooming, , feeding self and transfers on/off of chair.
- basic housekeeping – takes significantly longer than typical for laundry (3x longer; he struggles because it hurts to bend; also height issues) and for basic housekeeping (4x longer to vacuum and wash floors because of severe pain in back and knees).
- shopping – continuous assistance from another person required for going to and from stores (must have someone accompany him; has to have someone drive and carry the groceries due to his pain) and carrying purchases home (must have someone do this; unable to carry anything with weight to it); independent for reading prices and labels, making appropriate choices, and paying for purchases.
- meals – takes significantly longer than typical for meal planning (he picks meals that are quick due to not being able to stand long), food preparation and cooking (3x longer; he tries to have food prepped due to not being able to stand long.)
- pay rent and bills – independent in all aspects.
- medications – takes significantly longer than typical for taking as directed (will take more than prescribed at times due to intense pain); independent in other aspects.
- transportation – independent in all aspects.

The RSW comments that because of the appellant's severe pain in back, left knee and hips he needs assistance to do any shopping; also he does minimal housekeeping because it is too daunting due to his pain.

With respect to social functioning the RSW assesses the appellant independent in all listed areas: making appropriate social decisions, ability to develop and maintain relationships, interacting

appropriately with others, ability to deal appropriately with unexpected demands (with the comment that however suffers from anxiety attacks when too many demands are put on him), and ability to secure assistance from others

The RSW assesses the appellant's social functioning as good with both his immediate and extended social networks.

Help provided/required

PR:

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

AR:

In addition to the need for help for certain DLA as summarized above the RSW indicates that assistance is provided by other people through community service agencies and by friends. The RSW also indicates that the appellant requires the use of an assistive device namely braces.

Self report

In his SR, the appellant writes:

"I was diagnosed with severe osteoporosis back in 2006, which accounts for many fractures that I have had over the past years. It is unclear if the human growth hormone deficiency has anything to do with this. I experience severe back pain making it extremely difficult to sit or stand for extended periods of time. I have to wear a knee brace due to an assault in 2009: Since the assault I have applied to victim services and they supplied some physiotherapy and my knee brace. At the time I was self-employed [in the renovation trades]... With no way to work I have to rely on social services and food bank. I take pain killers daily, some days more than others. When I go to the food bank I have to make sure I arrange for a ride. With the supplements and proper foods that my rheumatologist recommends I find it extremely difficult to get by every month. Many times I don't get what I should. I have a hard time doing daily chores. It takes a long time to do cleaning etc. After the assault I started having panic attacks to the stress of loss of income and pain. I used to be quite active golfing, camping, fishing and hiking. A friend gave me a bicycle but because of my bad knee I can't even ride it. I can't get to many appointments for doctors and such if I don't have a ride..."

In the Request for Reconsideration the appellant writes:

"I am unable to function without the aid of a knee brace and pain killers. I have chronic back pain and also have problems with my hip and shoulder, which affects my ability and daily activities. I'm not able to work and when I can, [I] get help with housework such as cleaning etc. I must rely on friends to get groceries because I can't walk or carry them home. I take medication for osteoporosis and I'm supposed to take supplements, but I am unable to afford them. My specialist suggested exercise to increase flexibility and perhaps ease the pain. I believe that my physical condition should qualify as a disability."

In his Notice of Appeal, dated 29 October 2013, the appellant writes:

"I believe that my physical situation is difficult to explain... My doctor and I have a hard

time about describing my physical condition. I think that if I could talk to someone in person, I would be able to explain my situation thoroughly.”

At the hearing, the appellant provided the following additional information:

- He had applied before for PWD designation and feels that his GP filling out the report submitted in this application copied the information from the previous application.
- He is only able to walk without the knee brace the distance from his bedroom to his bathroom
- From a medical science perspective, it is unclear whether there is a causal link between growth hormone deficiency and osteoporosis. The osteoporosis causes a reduction in bone density, so that when bones rub together in a joint, they wear down more quickly (“grind together” as in his knee), causing pain and inflammation.
- He has been told by his specialist that the pain in his hip is due to his body over-compensating for the pain in his knee.
- He has shoulder, back, knee and hip pain, but is not a candidate for knee replacement surgery due to the osteoporosis.
- He has lost 20 pounds over the past couple of years and no longer walks long distances, plays golf or participates in other outdoor activities he once enjoyed. He attributes his weight loss to not being able to afford nutritious foods.

The balance of the appellant’s presentation went to argument, relating to his need for additional financial assistance to be able to purchase more nutritional food and calcium supplements and for bus passes to enable him to attend medical appointments.

The ministry stood by its position at reconsideration.

The panel finds that the new information provided by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration, clarifying the nature of the appellant’s impairment as diagnosed by the GP and the impact on his daily functioning. The panel therefore admits the appellant’s testimony pursuant to Section 22(4)(b) 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 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 determined 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 applicant. 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]." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it appropriately describes the legislative intent. The cause is usually set out as a disease, condition, syndrome, injury or even a symptom (e.g. pain or shortness of breath). A severe impairment requires the identified cause to have a significant impact on daily functioning.

Physical impairment

In the reconsideration decision, the ministry noted the appellant's physical skill limitations reported by the GP (able to walk 2 – 4 blocks unaided etc.) and the assessments by the RSW, including that he can only lift light objects and the remainder of his mobility and physical abilities, with the exception of standing, take significantly longer (2x longer than typical for walking indoors and climbing stairs and 4x longer than typical for walking outdoors) due to pain in hips and knees and back. On the basis of this evidence the ministry concluded that the impacts described by the GP and the RSW are more in keeping with a moderate degree of impairment and that therefore the ministry was not satisfied that the information provided is evidence of a severe physical impairment.

The appellant's position is that the pain in his knee, hip and back and his reliance on pain killers and on a knee brace for mobility of any distance, and the evidence on how much longer than typical it takes for him to do almost anything, all point to a severe physical impairment.

Panel findings

The GP has diagnosed the appellant with growth hormone deficiency and osteoporosis. As the appellant explained at the hearing, there is some scientific uncertainty as to whether there is a causal relationship between the two conditions. While the growth hormone deficiency is responsible for the appellant's small stature, the panel notes that no argument has been made and only passing

reference ("height issues" regarding the RSW's assessment of the appellant's restrictions doing laundry) as evidence provided that the appellant's small stature is an impairment for the purposes of PWD designation. Accordingly, the panel will focus on the severity of the appellant's impairment arising from his diagnosis of osteoporosis.

The panel notes that the GP has assessed the appellant able to walk 2 to 4 blocks unaided, climb 5+ steps unaided, and limited to being able to lift under 5 lbs. The GP reports that the appellant is not restricted in his ability to perform the DLA of walking indoors and outdoors. The GP indicates that the appellant does not require any prostheses or aids for his impairment, making no reference to a knee brace. In the AR, the RSW indicates with a tick mark that the appellant routinely uses a knee brace, but provides no explanation. At the hearing, the appellant stated that he can only walk a few steps without the brace, explaining that he needed to wear it to be able to do anything at all. However, there is no evidence from the medical practitioner or prescribed professional describing the need for the knee brace..

The GP further reports that the appellant is restricted in the ability to perform 2 DLA: basic housework and daily shopping, requiring help from friends. The RSW provides more detailed information, indicating that the appellant takes 2x – 3x longer than typical for many aspects of DLA relating to personal care, basic housekeeping and meals, and requires help from friends for shopping, in terms of going to and from stores and carrying purchases home from stores (see below). The RSW also reported that the appellant "has to stay in bed because his pain is acute; he must stay there until his pain meds have taken the edge off." The panel notes that the RSW has not provided any information as to how frequently the appellant is bed-ridden because of his pain. Based on the evidence available at reconsideration, and without confirmation of the medical need for the knee brace and a clearer picture of how often and to what extent the appellant's pain keeps him bed-ridden or housebound, the panel finds that the ministry was reasonable in concluding that the information provided indicated impacts of the appellant's physical medical conditions more in keeping with a moderate impairment. The panel therefore finds that the ministry reasonably determined that a severe physical impairment had not been established.

Mental impairment

The position of the ministry is that the impacts of the appellant's diagnosed anxiety disorder described by the GP and the RSW are more in keeping with a moderate degree of impairment; therefore the ministry found that there is not enough evidence to establish a severe mental impairment.

The appellant's position is that the cognitive and emotional deficits identified by his GP, and the impacts on daily functioning by his RSW are sufficient to establish a severe mental impairment.

Panel findings

The panel notes that the GP has diagnosed the appellant with anxiety disorder and has identified deficits with cognitive and emotional function in the area of emotional disturbance. In the AR, the RSW has assessed moderate impacts on daily functioning in four areas: bodily functions (sleep disturbance), emotion (anxiety), attention/concentration and motivation. The RSW has also assessed the appellant independent – requiring no support or supervision – with respect to social functioning, and reports good social functioning with his immediate and extended social networks. As the RSW

assessed as moderate the impacts of the appellant's anxiety disorder on daily functioning, and as no restrictions were assessed with respect to the appellant's social functioning, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Significant restrictions in the ability to perform DLA.

In the reconsideration decision, the ministry reviewed the information provided by the RSW respecting the appellant's ability to perform DLA requiring physical effort, noting that for most aspects of DLA the appellant was assessed as independent or taking longer than typical. In the ministry's opinion, taking 2x – 3x times longer is not considered significant. The position of the ministry was that, based on the information provided by the GP and the RSW, there was not enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

The position of the appellant is that the pain in his knee, hip and back significantly restricts his mobility and his ability to manage many daily tasks, including personal self care, shopping, housework and meal preparation, to the extent that these tasks take significantly longer than typical or that he requires help from friends. The evidence provided by his GP and the RSW demonstrates that this criterion has been met.

Panel findings

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 in this appeal. This DLA criterion must also be considered in terms of the framework of the legislation, which starts with the provision that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information that would satisfy the minister that there are direct and significant restrictions in the ability to perform DLA, either continuously or periodically for an extended period.

The evidence is that the GP has assessed the appellant restricted in the DLA of shopping for personal needs and basic housekeeping. The RSW has also identified restrictions in the DLA of moving about inside and outside the home, personal self care and meal preparation. The issue is whether these restrictions are significant from an overall perspective, either continuously or periodically for extended periods. The GP indicated that the appellant requires help from friends "a few days a week" with respect to shopping and basic housekeeping, but except for commenting that the appellant needs someone for carrying his groceries, does not provide any information on the details or extent of such assistance. For the DLA identified by the RSW as restricted, with the exception of shopping (for which help is indicated as required for going to and from stores and carrying purchases home), the remaining DLA are all assessed in terms of taking from 2x to 4x longer than typical. The panel finds that, without further explanation as to how much time it takes to do a given task, the ministry was reasonable in not considering such assessments as reflecting a significant impact. There is no evidence to suggest that the appellant is restricted in making decisions about personal activities, care or finances or relating to, communicating or interacting with others effectively. The panel also notes that the RSW assesses the appellant independent – not requiring



any support or supervision – with respect to social functioning. Considering all the evidence, it is difficult for the panel to conclude that the appellant is “significantly” restricted in his overall ability to perform DLA, either continuously or periodically for extended periods. Further, as a severe mental or physical impairment has not been established, the panel finds that the ministry reasonably determined that this criterion had not been met.

Help with DLA

The ministry’s position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant’s position is simply that he requires a knee brace for mobility and the ongoing help from others for household chores and shopping.

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. As discussed above, no evidence has been provided by a medical practitioner that would confirm that the need for the knee brace. 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. The panel therefore confirms the ministry’s decision.