

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 18, 2013 which found that the appellant did not meet four of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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 the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 30, 2013, a physician report (PR) and an assessor report (AR) both dated May 3, 2013 and completed by a general practitioner who has known the appellant approximately one year. Also included was the following: Request for Reconsideration dated September 19, 2013.

Diagnoses

The appellant has been diagnosed by the general practitioner with diabetes (3 years), asthma, poor insight of medical illness (with a diagnostic code for 'other mental disorder'), was drinking alcohol in past and the appellant says he stopped (with a diagnostic code for 'substance-related disorders'), and chronic liver disease. The general practitioner also noted recurrent UTI [urinary tract infection], prostatitis, and eczema.

Duration

- In the PR, the appellant's general practitioner checked neither "yes" nor "no" in response to the question whether the appellant's impairment is likely to continue for two years or more and wrote: "patient came with multiple problems; poor insight, no social support, divorced, trying to resolve but it will take time. It may or may not take 2 years."

Physical Impairment

- In the PR, the general practitioner indicated for the appellant's health history that the appellant "has poor insight into his medical condition, DM [diabetes mellitus] uncontrolled." The appellant also has recurrent UTI, prostatitis, and went to hospital a few times. He has alcoholism in his past and says he is not drinking, with no history of going to detox. The general practitioner also wrote that the appellant has "DM, asthma, HTN [hypertension], abnormal LFT [liver function test]. Past had alcoholism, divorced, lives alone, poor personal hygiene, DM-related complications; all these conditions make him impaired."
- The general practitioner indicated that the appellant does not require any prosthesis or aids for his impairment.
- Functional skills reported by the general practitioner in the PR indicated that the appellant is able to walk 4 or more blocks unaided on a flat surface, he can climb 5 or more steps unaided, is able to lift 2 to 7 kg (5 to 15 lbs.), and has no limitation with remaining seated.
- In the additional comments to the PR, the general practitioner wrote that the appellant was admitted to hospital due to his DM which is uncontrolled and resulted in foot cellulitis and delirium. Upon discharge, the appellant came to the general practitioner and he has come multiple times for various medical issues. The general practitioner wrote: "his poor social status, past alcoholism, no income may be compounding with ill health... at this point he needs financial and social help to recover from his current state."
- In the AR, the general practitioner indicated that the appellant is independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding.
- In his self-report, the appellant wrote that he has very high blood sugar levels, a damaged liver, an infection in his whole body due to sugar and liver infection, very high blood pressure, weak

eye sight, swelling in his legs and feet and he cannot walk and move properly, difficulty in digesting and eating food, and asthma for which he is using a "pump for curing it."

- The appellant wrote that because of all of these medical problems, it is very difficult for him to move, eat, sleep and do other "works" inside as well as outside his home. He has to go to the hospital many times (more than 20 times) during this year and the past year.

Mental Impairment

- In the PR, the general practitioner indicated that the appellant has difficulty with communication, identified as having a cognitive cause and the note: "poor insight."
- The general practitioner reported that there are significant deficits with cognitive and emotional function in the area of emotional disturbance and "other" with the note: "poor insight and understanding of his illness." The general practitioner added comments: "perhaps his social status as a single person without any friends or family here contributes to it."
- In the AR, the general practitioner reported a good ability to communicate in the areas of speaking and hearing and a note for reading and writing that the appellant "deficient due to no education."
- In the AR, the general practitioner indicated a major impact to cognitive and emotional functioning in the area of insight and judgment, with moderate impacts in bodily functions, emotion, impulse control, attention/concentration, executive, and memory. Minimal impacts are assessed for consciousness, impulse control (also moderate), and motivation, with no impact in the remaining 4 areas of functioning. The general practitioner did not add further comment.
- The general practitioner reported that the appellant is independent in 4 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant is assessed as requiring periodic support/supervision with developing and maintaining relationships, with no further explanation or description provided.
- The general practitioner reported that the appellant has marginal functioning in both his immediate and extended social networks.

Daily Living Activities (DLA)

- In the PR, the general practitioner reported that the appellant has not been prescribed medications or treatments that interfere with his ability to perform his DLA.
- In the AR, the general practitioner responded to the request to summarize the mental or physical impairments that impact the appellant's ability to manage his DLA with the note "poor insight, judgment."
- The general practitioner indicated that the appellant is independent with walking indoors and outdoors.
- The general practitioner reported that all of the tasks of the DLA personal care, basic housekeeping, meals, and transportation are performed independently by the appellant with no need for assistance from another person.
- The general practitioner reported that for 2 of 5 tasks of the DLA shopping, namely making appropriate choices and paying for purchases, the appellant requires periodic assistance from another person. For reading prices and labels, the general practitioner noted: "cannot read." There is no further explanation or description provided by the general practitioner.

- For paying rent and bills, the general practitioner assessed the appellant as requiring periodic assistance from another person with all tasks, including banking, budgeting and paying rent and bills. No further explanation was provided.
- The general practitioner reported that the appellant is independent with safe handling and storage of medications, and requires periodic assistance from another person with filling/refilling prescriptions and taking as directed.
- In the additional information to the AR, the general practitioner wrote that the appellant's multiple medical problems, no income, no social support, poor insight, "makes him impaired."
- In his self-report, the appellant wrote that the medicines and injections make him dizzy and "...at that time I feel totally disabled to look after myself."

Need for Help

- The general practitioner reported that the appellant lives alone and help required for DLA is provided by volunteers and community service agencies.
- In the additional comments to the AR, the general practitioner wrote that the appellant "needs help in daily activities: food, medication, transportation, planning and (illegible) until all his medical and mental issues dealt with."

In his Notice of Appeal, the appellant expressed his disagreement with the reconsideration decision. The appellant wrote that his health challenges are very severe.

At the hearing, the appellant provided an additional document, being a declaration by a friend dated November 14, 2013, in which he wrote:

- He assists the appellant in various activities, including accessing the community to do all banking activities. He assists the appellant to fill all prescriptions.
- He assists the appellant with climbing stairs and walking outdoors as the appellant holds onto his arm and uses his cane to walk.
- He assists the appellant to do all of his food preparation, meal planning, and cooking for him. He buys his food and delivers it to him.
- He assists the appellant by doing all of his laundry and basic housekeeping.

At the hearing, the appellant and his advocate provided the following oral evidence:

- The appellant stated that he cannot walk and he is seeing a specialist at the hospital. He is unable to walk even a few steps.
- The appellant has a severe heart problem and it is throbbing. He is shivering. This problem started about 20 days ago and he was admitted to hospital because he could not stand or walk.
- His blood sugar level is at the highest level at 18. The appellant takes a number of medications for his diabetes, 3 times per day, and has been doing so for about 5 years. The doctor has not put him on insulin injections. The appellant told the doctor that the medications are not working but they have not been changed.
- The appellant has swelling in his liver, and a severe inflammation in his testes.
- He has breathing problems.
- He was in the hospital for 10 days where he was given an IV with glucose, and his hands are shaking.
- The appellant has so many problems that the doctor said it would be hard to cure him.

- The appellant has been referred to 3 different specialists, one for his diabetes, one for his heart problems and one for his liver condition.
- The appellant has a severe infection in his left eye and jaw, which is numb, and the doctor said that it might be due to his diabetes, but did not take much notice. He has blurred vision and cannot see properly. He was prescribed medications for this problem but he did not have the money to fill the prescription. This problem started about 25 days ago. When he saw the specialist, he was told that this is a serious problem and he ordered some tests to be conducted.
- The appellant is currently taking medications for depression which were prescribed when he was last in hospital. The appellant has not been drinking for about 1 year.
- The appellant's friend has been helping him with the activities that the friend described in his declaration for about a year. The friend helps the appellant because he cannot walk. The appellant also cannot cook food.
- When the reports for the PWD application were completed, the appellant was asked questions by the doctor. The doctor did not ask about his lifting ability, but the appellant has difficulty lifting because he cannot bend due to injuries from a previous assault.
- The advocate stated that the general practitioner has not only been unhelpful with the appellant's application, but she has been threatening to apply to get his driver's license revoked.
- The advocate provided several options for the general practitioner to assist her patient, including a prepared checklist or an open-ended letter, and she refused. The general practitioner stated that this would bring her medical professionalism and integrity into question.
- The advocate stated that some of the inconsistencies in the reports and the lack of notes made show that the doctor did not take the time necessary with the application. It looks like she spent 10 minutes completing the reports. The general practitioner indicated a limitation for lifting in the PR under functional skills, for example, and then assessed the appellant as independent with lifting and carrying and holding in the AR. The advocate has seen that the appellant cannot walk 4 or more blocks unaided, as set out in the AR. The appellant uses a cane for all walking and gets assistance with his DLA, as stated by the appellant's friend.
- The advocate is assisting the appellant with making a complaint with the College of Physicians and Surgeons for not meeting her duty to assist her patient.
- The appellant has gone to a new doctor but doctors will not fill out the reports without a medical history and they prefer to see a patient for 6 to 12 months before providing an opinion.
- The appellant's friend cooks meals for the appellant and delivers them to him.

The ministry did not object to the new evidence. The panel admitted the declaration dated November 14, 2013 and the evidence on behalf of the appellant relating to his diagnosed medical conditions, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing further detail in support of information that was before the ministry on reconsideration. The panel did not admit the evidence relating to the appellant's heart condition as this was not part of the information or records before the ministry at reconsideration.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's determination that the appellant is not eligible for designation as a person with disabilities (PWD) was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

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.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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.

Duration

The appellant's position is that the comments by the general practitioner in the PR indicate that it is possible that the appellant's impairment will continue for 2 years.

The ministry's position is that the appellant's general practitioner has not confirmed that the appellant's impairment will continue for two years or more.

Panel Decision

Section 2(2)(a) of the EAPWDR requires that there must be the opinion of a medical practitioner indicating that the appellant's impairment is likely to continue for at least two years. In response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the general practitioner did not check either the "yes" or "no", but wrote: "patient came with multiple problems; poor insight, no social support, divorced, trying to resolve but it will take time. It may or may not take 2 years." The panel finds that while the general practitioner's comments indicate a possibility that a variety of conditions, both medical and social, may take 2 years to resolve, there is no indication of a likelihood that the impairment will continue for 2 years, as required by the legislation. The panel finds that the ministry's determination that the medical practitioner had not confirmed that the appellant's impairment will continue for two or more years from the date of the application was reasonable.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of his multiple medical conditions which impact his mobility to the extent that he requires the use of a cane and the assistance of another person to walk. The appellant argued that he has very high blood sugar levels, a damaged liver, an infection in his whole body due to sugar and liver infection, very high blood pressure, weak eye sight, and swelling in his legs and feet. The appellant argued that he cannot walk and move properly, he has difficulty in digesting and eating food, and he is uses "a pump" for his asthma. The appellant argued that because of all of these medical problems, it is very difficult for him to move, eat, sleep and do other "works" inside as well as outside his home.

The ministry's position is that there is not sufficient information to establish that the appellant has a severe physical impairment. The ministry pointed out that the general practitioner indicated that the appellant is able to walk 4 or more blocks unaided, climb 5 or more steps unaided, lift between 5 and

15 lbs. and he has no limitation to remain seated. The ministry argued that the general practitioner indicated that the appellant is independent in all aspects of mobility and physical abilities.

Panel Decision

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner or prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner of approximately one year, has diagnosed the appellant with diabetes, asthma, chronic liver disease, recurrent UTI, prostatitis, and eczema. In the PR, the general practitioner indicated for the appellant's health history that his DM is uncontrolled, that he has recurrent UTI and prostatitis and has gone to the hospital a few times. There were no hospital records or further medical reports provided. The general practitioner wrote that the appellant has "DM, asthma, HTN, abnormal LFT; past had alcoholism, divorced, lives alone, poor personal hygiene, DM-related complications; all these conditions make him impaired." The only current restriction identified to the appellant's functional skills in the PR is in the area of lifting, which is limited to 5 to 15 lbs. In the AR, the general practitioner indicated that the appellant is independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. The appellant stated that he has difficulty with lifting because he cannot bend, and the evidence of the general practitioner is that he can independently lift up to 15 lbs.

The advocate stated that the appellant requires a cane to walk and the assistance of his friend who completed the declaration. However, the general practitioner indicated that the appellant's mobility is independent and he does not require any prosthesis or aids for his impairment. The advocate pointed to the appellant's evidence that because of all of his medical problems, it is very difficult for him to move, eat, sleep and do other activities inside as well as outside his home. The advocate argued that the general practitioner did not take the necessary time to complete the reports for the PWD application and was not helpful in providing an update or clarification to this information, which has left the appellant with no recourse but to consult with another doctor and start the lengthy process over again.

The panel finds that the general practitioner provided a number of additional comments and information in both the PR and the AR, in addition to completing the checklists, which indicates some time and thought applied to the process of completing the reports. The comments by the general practitioner highlighted social conditions as well as medical issues that contribute to the appellant's impairment, but that his level of physical functioning remains independent. The panel concludes that the ministry reasonably determined that the evidence currently available regarding the appellant's physical condition does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant did not advance a position that he has a severe mental impairment but stated that the combination of his medical conditions results in a severe impairment.

The ministry's position is that the information provided is not sufficient evidence of a severe mental impairment. The ministry argued that the impacts described by the general practitioner are more in keeping with a moderate degree of impairment.

Panel Decision

The appellant's general practitioner diagnosed 'substance-related disorders', with a note that the appellant was drinking in the past and says he stopped, as well as 'other mental disorder', with a comment that the appellant has poor insight into his medical illness. The general practitioner reported that there are significant deficits with cognitive and emotional function in the area of emotional disturbance and "other" with the note: "poor insight and understanding of his illness." Added comments are: "perhaps his social status as a single person without any friends or family here contributes to it." Again, the comments by the general practitioner highlighted social conditions as well as medical issues that contribute to the appellant's impairment. The appellant stated that he is currently taking medications for depression that were prescribed when he was in hospital, but did not elaborate. The general practitioner indicated a major impact to cognitive and emotional functioning in the area of insight and judgment, with moderate impacts in bodily functions, emotion, impulse control, attention/concentration, executive, and memory, and minimal or no impacts in the remaining 7 areas of functioning. The general practitioner did not add further comment.

The general practitioner indicated that the appellant has difficulty with communication, identified as having a cognitive cause and the note: "poor insight." The general practitioner reported a good ability to communicate in the areas of speaking and hearing and noted that the appellant's reading and writing is "deficient due to no education", which the panel finds is not a restriction related to a mental disorder. The appellant is assessed as independent in 4 of 5 areas of social functioning, including making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. While the general practitioner reported that the appellant requires periodic support/supervision with developing and maintaining relationships, there is no further explanation or description provided to allow a determination of the extent of the support/supervision required in this area. Therefore, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA to the point that he requires the assistance of another person in many tasks of his DLA and the use of a cane as an assistive device.

The ministry's position is that there is not sufficient evidence from the prescribed professional to establish that the appellant's impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods of time. The ministry argued that while the general practitioner indicated that some tasks of DLA require periodic assistance from another person, no information is provided on how often the appellant requires assistance to allow a determination that the assistance is required for extended periods.

Panel Decision

The evidence of a prescribed professional, the appellant's general practitioner, is that the appellant is

independent with mobilizing indoors and outdoors. Although the appellant's friend wrote in his declaration that he assists the appellant with climbing stairs and walking outdoors, that the appellant holds onto his arm and uses his cane to walk, there was no updated information from a prescribed professional to confirm this restriction. In the AR, the general practitioner reported that the appellant is independent in all of the tasks of the DLA personal care, basic housekeeping, meals, and transportation and he does not require assistance from another person. The appellant's friend stated in his declaration that he assists the appellant to do all of his food preparation, meal planning, and cooking, and that he also assists the appellant by doing all of his laundry and basic housekeeping. Again, there was no updated information from a prescribed professional, as the advocate explained that the general practitioner refused to provide further information. The appellant's friend wrote that he buys the appellant's food and delivers it to him. The general practitioner reported that the appellant is independent with going to and from stores and carrying purchases home, while requiring periodic assistance for making appropriate choices and paying for purchases. There is no further explanation or description provided by the general practitioner.

In his declaration, the appellant's friend wrote that he assists the appellant in various activities, including accessing the community to do all banking activities and to fill all prescriptions. The appellant stated that his friend helps him to walk to perform these activities. While the general practitioner assessed the appellant as requiring periodic assistance from another person with all tasks of finances, including banking, budgeting and paying rent and bills, and with tasks of medication, namely filling/refilling prescriptions and taking as directed, there is no further explanation or description provided by the general practitioner. In his self-report, the appellant wrote that the medicines and injections make him dizzy and "...at that time I feel totally disabled to look after myself;" however, the general practitioner reported that the appellant has not been prescribed medications or treatments that interfere with his ability to perform his DLA.

For those DLA relating to a mental impairment, the general practitioner reported that the appellant is independent in making appropriate social decisions, interacting appropriately with others, and securing assistance from others. His difficulty with communication is identified as having a cognitive cause of "poor insight."

The advocate argued that, in the appellant's circumstances where the general practitioner is not assisting her patient, more weight should be placed on the evidence of the witnesses over that of the prescribed professional. However, the wording of Section 2 of EAPWDA requires the opinion of the prescribed professional to satisfy this criterion. Here, the evidence of the prescribed professional is that the appellant performs a majority of his DLA independently and, for those tasks of DLA assessed as requiring periodic assistance, there is no explanation or description of the assistance in order to show that it is required for extended periods of time. The panel finds that the ministry reasonably concluded that the information from the prescribed professional does not establish that the appellant's impairment directly and significantly restricts DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that he requires the significant assistance of others to perform many of his DLA and the use of a cane as an assistive device.

The ministry's position is that because it has not been established that DLA are significantly

restricted, it cannot be determined that significant help is required, and there is no indication that an assistive device is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel finds that the evidence of the prescribed professional is that the appellant lives alone and the help required for DLA is provided by volunteers and community service agencies. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions.

Conclusion

Having reviewed and considered all of the evidence and 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, and therefore confirms the decision.