

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated November 18, 2013 which found that the appellant did not meet three of the five statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- the evidence establishes that 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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 reconsideration consisted of:

- 1) The appellant's Request for Reconsideration (RFR) dated November 8, 2013;
- 2) PWD Decision Summary dated October 18, 2013; and
- 3) A PWD application comprised of a Self-report (SR) signed by the appellant on June 4, 2013; a Physician Report (PR) and an Assessor Report (AR), both dated June 8, 2013 and both completed by the appellant's general practitioner. On the AR the general practitioner reports that he has known the appellant for one year and has seen the appellant 11 or more times in the last year.

In the Notice of Appeal dated November 29, 2013 the appellant states that he cannot work because of his serious illness and he does not know when he will recover. He indicates that his family doctor should be contacted for more information.

The following is a summary of the evidence from the PWD application and the appellant's evidence.

Physical Impairment

In the SR, the appellant states that he has irregular heart rate and cardiac issues and that the medications would not work for a period of time. In the RFR the appellant states that he has various health conditions, is always short of breath, can only walk for 3 blocks then has to stop and rest. He reports that he cannot carry more than 10 pounds and cannot walk steadily because of his leg problem.

At the hearing, the appellant stated that he has difficulties with shortness of breath and difficulty walking upstairs. He stated that he can walk okay on flat surfaces if he goes slowly but he has 38 stairs to get into his building and he can only take 10 stairs at a time. He states that his right knee is also swollen all the time which causes further difficulty with walking. He stated that he has an irregular heartbeat and high blood pressure but those conditions do not affect him too much but require him to take medication.

In the PR, the general practitioner diagnoses the appellant with congestive heart failure and arterial fibrillation discovered in May 2012. The general practitioner notes that the appellant has chronic fatigue and shortness of breath with mild exertion. He also reports that the appellant is 5'7" and weighs 136 pounds. The appellant has been prescribed a medication that causes tiredness so it interferes with his ability to perform activities of daily living (DLA). The general practitioner notes that the appellant will require the medications long term but does not require any prostheses or aids.

Functional skills reported in the PR indicate that the appellant can walk 1 to 2 blocks unaided, can climb 5+ stairs, can lift between 5 to 15 pounds and has no limitations with respect to being seated.

Under Part F – additional comments, the general practitioner reports that the appellant will likely need another medication to control thrombo-embolic events.

In the AR, the general practitioner reports that the appellant lives alone, and has chronic fatigue and shortness of breath on minimal exertion. The general practitioner reports that the appellant is independent with walking indoors and walking outdoors, but takes significantly longer when walking outdoors as he needs to take frequent stops. The general practitioner reports that the appellant requires periodic assistance with climbing stairs and continuous assistance with lifting and carrying.

Mental Impairment

The appellant stated that he does not have any mental impairment. He did state that he does have some language difficulties and struggles with his memory and needs motivation to take care of himself.

In the PR, the general practitioner reports that the appellant does not have any significant deficits with cognitive and emotional function.

In the AR, the general practitioner reports that the appellant's ability with speaking and hearing are satisfactory and that his ability with reading and writing are poor.

Although the general practitioner did not identify a mental impairment or brain injury, he completed section 4 Cognitive and Emotional Functioning, reporting that there is no impact to the following areas: consciousness, emotion, impulse control, psychotic symptoms, other neuropsychological symptoms or other emotional or mental problems and minimal impact to bodily functions, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, and language,.

Daily Living Activities (DLA)

At the hearing, the appellant reports that he has difficulty lifting items over 15 pounds and that his ability to perform exercises such as weightlifting and swimming is reduced. He reports that he does not like to cook and prefers to eat out, although he does make noodles at home. The appellant reports that he has a friend who comes to his house every three days, sometimes for 30 minutes and sometimes for more than one hour, to help him with housekeeping, such as vacuuming, mopping the floors, cleaning the toilet or bathtub. The appellant reported that his friend also reminds him to take his medications and that he has to take his pills in the morning as well as a spray, four times daily, to help with his breathing. The appellant reports that he is able to attend appointments on his own and that his rent is paid direct but his friend helps him to pay his phone bill.

In the AR, the general practitioner reports that the appellant is independent with the following DLA: dressing, grooming, bathing, toileting, feeding self, transfers, laundry, reading prices and labels, making appropriate choices, paying for purchases, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medications as directed, and safe handling and storage of medications.

The general practitioner reports that the appellant requires periodic assistance with regulating diet (needs help to regulate salt intake), basic housekeeping, going to and from stores (advised to choose close by stores), carrying purchases home (small loads only), meal planning, food preparation, cooking and safe storage of food, (can only do simple tasks like heating up food, meals on wheels can help), getting in and out of a vehicle, using public transit and using transit schedules (avoid peak hours, kind and sympathetic drivers appreciated).

With respect to social functioning, the general practitioner reports that the appellant requires periodic supervision to make appropriate social decisions (socially impaired, isolative and withdrawn at times), developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

The general practitioner reports that the appellant has good functioning with his immediate social network and marginal functioning with extended social networks.

Need for Help

The appellant reports that his friend helps him with household tasks, taking medications and paying his cell phone bill. The appellant reports that he uses a cane for walking, but only if he has to walk more than two miles. The appellant also reports that he needs physiotherapy but has not had any to date.

In the AR, the general practitioner reports that the appellant's friends provide assistance but that adult day care can help and that the appellant requires help with diet monitoring and transportation services. The physician also reports that the appellant does not require any assistive devices or the assistance of an assistance animal.

The panel has admitted the appellant's oral testimony into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's medical impairment and DLA.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe physical or mental impairment;
- that the appellant's DLA's 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, the appellant does not require the significant help or supervision of another person, 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.

Severe physical impairment:

The appellant's position is that he has a severe medical condition as he has an irregular heart rate, cardiac issues, shortness of breath and fatigue and that his medication would not work for a period of time. The appellant's position is that his shortness of breath and inability to walk steadily or carry heavy items is a severe physical impairment. The appellant's position is that he should qualify for PWD designation and that if more information is required, his family doctor should be contacted, as he noted in his Notice of Appeal.

The ministry's position is that because the appellant's general practitioner reports that the appellant is independent with many aspects of mobility and physical ability, the ministry is not satisfied that the information establishes that the appellant has a severe physical impairment. The ministry also states that while the appellant may not be able to work, the PWD application is not intended to assess employability or vocational abilities and that employability is not an eligibility criterion for designation as a PWD.

Panel Decision

The panel finds that a medical practitioner, the appellant's general practitioner, has diagnosed the appellant with congestive heart failure and arterial fibrillation. Functional skills reported in the PR indicate that the appellant can walk 1 to 2 blocks unaided, can climb 5+ stairs, can lift between 5 to 15 pounds and has no limitations with respect to being seated.

The panel notes that although the appellant reports that he has difficulties with shortness of breath and walking up more than 10 stairs at a time, he has not provided any further information from a medical practitioner about his limitations. Although the appellant stated that he has continued to see his family physician since the PR and SR were completed he did not have any further information from his family physician.

The legislation states 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. The legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. The panel finds that the ministry reasonably determined that the functional skills described by the general practitioner indicate that the appellant's functional limitations are in the mild to moderate range rather than severe.

The panel also notes that it does not have the jurisdiction to contact the appellant's family doctor to obtain more information and that it is up to the appellant to obtain the information and documentation from his family physician to support his application and/or appeal.

The panel concludes that based on all of the evidence, particularly that of the prescribed professional, the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe physical impairment under section 2(2) of the EAPWDA, was reasonable.

Severity of mental impairment:

The appellant confirmed that although he has some struggles with memory and motivation he does not have a mental impairment.

The ministry's position is that there is not enough evidence to establish that the appellant has a severe mental impairment.

Panel Decision

The panel notes that the appellant's general practitioner has not diagnosed the appellant with a mental disorder or any identified mental impairment, and in the PR, he reports that the appellant has no significant deficits in the areas of cognitive and emotional functions. However, on the AR, the general practitioner reports that the appellant has minimal impacts to his cognitive and emotional function in the areas of bodily functions, insight and judgment, attention/concentration, executive, memory, motivation, motor activity and language.

As the general practitioner has not diagnosed a mental disorder, identified any mental impairment or any impact to the appellant's cognitive and emotional functions, and as the appellant himself denies having a mental impairment, the panel finds that the ministry's decision, which found that there was not enough evidence to establish a severe mental impairment under section 2(2) of the EAPWDA, was reasonable.

Daily Living Activities (DLA)

The appellant's position is that his irregular heartbeat, fatigue, and shortness of breath, restricts his ability to exercise and perform housework and requires him to take frequent breaks.

The ministry's position is that based on the information provided by the appellant's physician, there is not enough evidence to establish that the appellant has a severe impairment that directly and significantly restricts his DLA continuously or periodically for extended periods. In particular, the ministry notes that although the appellant's general practitioner indicates that he requires periodic assistance with regulating his diet, basic housekeeping, going to/from stores, carrying purchases home, meal planning, food preparation, cooking, safe storage of foods, getting in/out of a vehicle, using public transit and arranging transportation, no information is provided on how often the appellant requires assistance. The ministry notes that the appellant's general practitioner reports that the appellant is independent with the remainder of his DLA and there is no information to indicate that it takes him significantly longer to perform those tasks. The ministry also notes that while the appellant's general practitioner indicates that the appellant requires periodic assistance with all aspects of social functioning, there is no information provided on how often he requires assistance or the duration of the required assistance.

Panel Decision

The legislation requires that in the opinion of a prescribed professional a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

Based on the evidence in the PR and the AR, the evidence of the prescribed professional indicates that the

appellant is independent with most aspects of DLA including dressing, grooming, bathing, toileting, feeding self, transfers, laundry, reading prices and labels, making appropriate choices, paying for purchases, paying rent and bills, obtaining medications and taking medications as directed. The prescribed professional indicates that while the appellant requires periodic assistance with regulating his diet, basic housekeeping, going to/from stores, carrying purchases home, meal planning, food preparation, cooking, safe storage of foods, getting in/out of a vehicle, using public transit and arranging transportation and social functioning, there is no information to indicate how much assistance or how often any assistance is required. In addition, the panel notes that several of the comments provided by the general practitioner indicate ways in which the appellant has been able to manage despite his impairment, such as by shopping at stores close to his home, avoiding peak hours on transit and carrying small loads only.

Although the appellant reports that he requires assistance with taking his medications and paying his phone bill, the general practitioner, on the AR, reports that the appellant is independent with those DLA. While it may be that the general practitioner does not fully appreciate the appellant's restrictions, the panel finds that the ministry was reasonable in finding that the information provided by the prescribed professional indicates that the appellant's impairments do not significantly restrict his ability to perform DLA, either continuously or periodically for extended periods.

In particular, the panel notes that the general practitioner has not indicated that the appellant requires continuous assistance with any DLA and that for the tasks where he requires periodic assistance, there is no information to indicate how much assistance is required or that he takes significantly longer to complete the DLA.

Therefore, the panel finds that the ministry reasonably determined that, based on the information provided by the prescribed professional that there was not enough information to establish a direct and significant restriction of the appellant's ability to perform his DLA thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

Help with Daily Living Activities (DLA)

The appellant's position is that he needs help with housecleaning, requires physiotherapy, and needs help to pay his phone bill and that his friend helps him every three days for 30 minutes to over one hour.

The ministry's position is that as it has not been established that DLA's are significantly restricted, it cannot be determined that significant help is required from other persons, and no assistive devices are required.

Section 2(2)(b)(ii) of the EAPWDA requires that, in the opinion of a prescribed professional, 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) of 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 appellant's position is that he requires some assistance with housecleaning, paying his phone bill and taking medications, and the AR confirms that the appellant needs periodic assistance with basic housework. The appellant's general practitioner confirms that the appellant needs help from friends, that adult day care would help, and that he will require ongoing medications and transportation assistance, however the general practitioner does not confirm that the appellant requires assistance with paying bills or taking medication.

Although the appellant's evidence is that his friend helps him every three days for 30 minutes to over one hour, there is minimal other information regarding the help required for DLA. In addition, there are inconsistencies between the appellant's evidence and the general practitioner's information with respect to whether the appellant requires help with paying his bills and taking medications.

Based on the evidence, 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 significant help or supervision to perform DLA as a result of those restrictions as required by EAPWDA section 2(2)(b)(ii).

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 a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.