

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the "Ministry") January 17, 2014 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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

For its reconsideration decision, the Ministry had the following evidence:

1. Appellant's PWD application dated stamped July 24, 2011 consisting of:

- A physician's report ("PR") undated and completed by a doctor who indicated that the Appellant had been a patient at the clinic for 1 year and he'd seen the Appellant 2-10 times in the 12 months preceding the report.
- An assessor's report ("AR") date stamped July 24, 2011 by a nurse practitioner, with the same clinic, who indicated that she has known the Appellant for 1 year and she'd seen the Appellant between 2-10 times in the 12 months preceding the report.

Based on the date of the reconsideration decision and other documents referred to below, the Panel finds that the date on the PWD application and on the AR should have been July 24, 2013. Also, because the doctor works for the same clinic as the nurse practitioner the Panel will consider the PR as having been completed on or about July 24, 2013.

2. Appellant's request for reconsideration with a written statement dated December 30, 2013 signed by him and a social worker who is associated with the same clinic as the doctor and nurse practitioner noted above. The statement provided clarification and details about the Appellant's conditions, set out below, as well as arguments supporting the Appellant's PWD application.

For this appeal, the Appellant submitted a letter dated January 28, 2014 signed by the doctor who completed the PR, the nurse practitioner who completed the AR and the social worker who submitted the reconsideration request statement. All are associated with the same clinic. The letter provided clarification about information and issues addressed in their earlier reports as well as additional details about the Appellant's conditions. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in the letter as being in support of the evidence that was before the Ministry at reconsideration.

Diagnoses

In the PR, the doctor diagnosed the Appellant with blindness in the right eye (congenital) and reduced vision in the left eye (congenital). Because some other reports mixed up which eye was blind, the doctor wrote in the January 28, 2014 letter that he wanted to clarify the diagnoses as follows: right eye blindness (congenital) and left eye reduced vision (congenital).

Physical Impairment

In the PR, the doctor described the severity of the Appellant's medical conditions and impacts as follows:

- Right eye – blind; Left eye – slight vision impairment with a depth perception. Has difficulty reading, attending school, studying or seeing anything far away or close up.
- The Appellant has been prescribed no medications and/or treatments that interfere with his ability to perform daily living activities; no prosthesis available.
- Can walk unaided 4+ blocks, climb 5+ stairs unaided, has no limitations with lifting or remaining seated.

In the AR, the nurse practitioner described the Appellant's impairments as difficulty with depth perception, left eye no vision, right eye easily fatigued, difficulty reading, difficulty with school, cannot

see chalkboard. She also reported that the Appellant's hearing is good, reading and writing are poor and he cannot speak English. In the January 2014 letter, the information about which eye has no vision was corrected.

In the December 2013 letter, the following information was provided about the Appellant:

- Has extremely difficult time seeing due to congenital eye problems; does not have depth perception; condition is irreversible and therefore is not a surgical candidate.
- Takes significantly longer walking, lifting, climbing and sitting due to his blindness.
- Takes at least 3x longer than average person when walking due to depth perception issues and not being able to see most things in front of him; requires some guiding at times when walking in the community, either a friend or his father assists him.
- Can only walk up or down stairs when lit appropriately, with railing as assistance and another person to guide him due to depth perception problems.
- Experiences visual/spatial problems impacting his daily living in a moderate way (hard time stepping up or down stairs); often avoids situations where required to use depth perception (drastically impaired).
- Because he uses only one eye to see he regularly suffers from headaches and dizziness due to strain on functional eye, preventing him from leaving home at times, needs to sleep to rest his eye.

In the January 2014 letter, the following information was provided about the Appellant:

- In terms of whether a corrective lens could support the Appellant's left eye, he is seeing an ophthalmologist regularly to determine what can be done. At this time he is not a surgical candidate as this condition is irreversible.
- His left eye is continuously strained as it is the only working eye. It is unclear whether any corrective lens would ameliorate the strain on his left eye and this vision will remain impaired.
- His vision is severely impaired; needs continuous support in reading and writing; is unable to read and write in any language and communication is impaired as a result.
- Needs continuous support in reading and writing from family members or health care professionals; his communication impairment is a direct result of his visual impairment.
- Vision impairment can cause headaches and further strain on his left eye.
- Has significant visual impairment which significantly impairs all facets of his life.

Mental Impairment

In the PR, the doctor reported one significant deficit with cognitive and emotional function; that is, emotional disturbance, adding "depression, anger management issues" in that part of the report. However, there was no diagnosis of any mental health condition.

In the AR, regarding cognitive and emotional functioning, the nurse practitioner indicated:

- Major impact to other neuropsychological problems and minimal impact to emotion – "some depression/anxiety – causes anger".
- Difficulty [with] visual/spatial problem; no impact to 12 other areas of such functioning.

The following information was provided about the Appellant in the December 2013 letter:

- Depressive symptoms and anger management issues cause minimal to moderate impacts on his life; struggles with sleep due to depressive symptoms; cannot concentrate well, becomes

distracted and becomes angry – prevents him from sleeping well.

- Experiences significant anxiety when needs to leave his home due to blindness and time it takes to walk anywhere or engage in any services.
- Often becomes angry because he needs assistance – can isolate in his home to avoid seeking assistance; anger due to time it takes to complete simple trips (3x as long and often with assistance).
- Due to physical diagnoses, tends to isolate from others and stay home; stays with family for most part, not trying to meet others, goes to health care professionals when absolutely needed; struggles to engage with others due to impairment and mental health symptoms accompanying his impairment.

In the January 2014 letter, the Appellant is described as struggling with anger management issues and depression and as a result his sleep is also impaired, impacting his ability to further manage his daily living tasks in a reasonable amount of time.

Daily Living Activities

The doctor crossed out the chart on page 11 of the PR for reporting restrictions to the daily living activities defined in Section 2(1) of the EAPWDR. However, in the January 2014 letter, the doctor wrote that was an oversight on his part and he reproduced the chart in this letter with the following information:

- Continuous restrictions to meal preparation and daily shopping – requires continuous assistance due to his visual impairments; is unable to read labels or negotiate depth perception when cooking or preparing to cook; the Appellant's family provides this continuous assistance.
- Periodic restrictions to mobility outside the home, to use of transportation and management of finances – requires periodic support from his family when walking outside or taking transit or paying bills as he is unable to read anything due to his visual impairment; as a result of his physical disability the Appellant often misses stops or cannot read street signs.
- No restrictions to personal self care, management of medications, basic housework and mobility inside the home.

The writers of that January 2014 letter stated that their clinic supports the Appellant's PWD application being approved and provided the following information about the Appellant:

- He is severely impaired in his daily functioning.
- Although he can complete some daily tasks unassisted it is quite evident that he requires continuous support with reading prices, labels, shopping and meal preparation.
- He also often requires support in taking transit, walking outside to negotiate barriers and management of finances.
- When he is able to complete tasks including self care, it can take significantly longer due to his visual impairment.
- Has significant visual impairment which means he will be significantly impaired in all facets of his life.

In the AR, the nurse practitioner reported the following impacts on the Appellant's daily living activities:

- Independent walking indoors and outdoors, standing, lifting, carrying/holding; needs periodic assistance and takes significantly longer climbing stairs – "can only walk up/down stairs if well lit".

- Independently manages all aspects of personal care, basic housekeeping, meals, social functioning, and shopping except he needs continuous assistance reading prices/labels.
- Needs continuous assistance with banking, budgeting, paying rent/bills – adding requires assistance reading paper/computer, but no cognitive difficulties.
- Needs continuous assistance with filing/refilling prescriptions and safe handling/storage, but is independent taking medications as directed.
- Is independent getting in and out of a vehicle, but needs continuous assistance using public transit (cannot read bus number) and with using transit schedules/arranging transportation.
- Has good functioning with his immediate social network and marginal functioning with his extended social network – sometimes socially withdrawn, reclusive.

The following information about the Appellant was provided in the December 2013 statement:

- Needs continuous support with reading, paying bills, writing and taking buses, not because of language difficulties, but because he cannot read schedules or bus numbers.
- Can see only very little, thus requires continuous assistance reading in English and his native language – not due to a language barrier; has been enrolled in a special course to learn English for people who struggle in regular classroom settings due to physical or mental impairment.

Help with Daily Living Activities

In the AR, the nurse practitioner noted that the Appellant's family does most of the shopping and pays his bills, rent etc. No assistance is provided by assistive devices or assistance animals.

In the December 2013 statement, there is information that the Appellant:

- Requires some guiding at times when walking in the community – either a friend or his father assists him.
- Can walk up or down stairs with railing as assistance and another person to guide him due to depth perception disability.
- Because he can see only very little, his family has to help him every day navigate the bus system, go to the bank to pay his bills, read anything including school work.

In the January 2014 letter, there is information about the type and extent of assistance that the Appellant requires. The Appellant's family or friends provide:

- Continuous assistance with meal preparation and daily shopping because the Appellant requires such assistance due to his visual impairment; he is unable to read labels or negotiate depth perception when cooking or preparing to cook.
- Periodic support from his family when walking outside, taking transit or paying bills – unable to read anything due to his visual impairment.

Ministry's Position

For this appeal, the Ministry relied on and reaffirmed its reconsideration decision.

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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.

Evidentiary Findings

The Panel has admitted into evidence the letter dated January 28, 2014, which was submitted by the Appellant for this appeal. That letter was signed by the three prescribed professionals who completed the PR, the AR and the reconsideration request statement. It is clear to the Panel that the January 2014 letter is not a form letter or a checklist, but rather was written to specifically clarify information previously submitted for the PWD application and reconsideration, and to address issues raised by the Ministry in its reconsideration decision. For this reason and also because it provides the most recent and specific information about the Appellant's conditions, the Panel gives this letter more weight than the other reports and submissions in the record.

The Panel will now consider each party's position regarding the reasonableness of the Ministry's decision under the applicable PWD criteria at issue in this appeal.

Severe Physical Impairment

The Appellant submitted that blindness in his right eye and reduced vision in his left eye significantly impairs his ability to function on his own. Three prescribed professionals confirmed that his visual impairment is a severe physical impairment, which significantly impairs his ability to manage daily tasks.

The Ministry, in its reconsideration decision, considered the information in the PR, the AR and in the December 2013 letter. It determined that the Appellant is independently able to manage mobility and physical activities. It also concluded that the information provided did not demonstrate a severe impairment or significant restriction in the Appellant's ability to perform daily activities.

The Panel's Findings

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how and the extent to which a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR.

In this case, information about the Appellant's circumstances was provided by a doctor, a nurse practitioner and a social worker who are all associated with the same clinic where the Appellant has been a patient for a year preceding the completion of the PR and AR. In the PR and the January 2014 letter, the doctor diagnosed the Appellant with blindness in the right eye and reduced vision in the left eye. In the letter, the doctor and other professionals noted that the Appellant needs continuous assistance in meal preparation due to his inability to read labels or negotiate depth perception. He also needs help when walking outside, taking transit or paying bills because he is unable to read anything due to his visual impairment. Other physical tasks, such as self care, can take significantly longer due to his visual impairment. In that letter, the Appellant's vision is described as severely impaired and his significant visual impairment significantly impacts all facets of his life. The Appellant is not a candidate for corrective surgery and, according to the professionals, it is unclear whether corrective lens can ameliorate the strain and impairment in his left eye.

In addition, in the December 2013 letter, the Appellant is described as taking significantly longer walking, lifting, climbing and sitting due to his blindness and depth perception issues, and as needing some guiding when walking. Also, he can only walk up or down stairs when lit appropriately, with a railing for assistance and another person to guide him due to depth perception problems. The same restrictions were noted in the AR, as well as restrictions with other activities requiring vision such as using transit and paying bills. Therefore, when all of the professional assessments are considered and especially the most recent one in January 2014, the Panel finds that it was not reasonable for the Ministry to determine that the information provided did not establish a severe physical impairment.

Severe Mental Impairment

The Appellant submitted that he has deficits to his cognitive and emotional functioning; that is, depression and anger management issues which impact his sleep, his social functioning and his ability to function on a daily basis.

The Ministry found that there was no information about impacts from depression/anxiety or anger on daily functioning. Therefore it was not satisfied that there was evidence of a severe mental

impairment.

The Panel's Findings

The Panel finds that there is no diagnoses of a mental health condition only the doctor's report in the PR of one deficit to cognitive and emotional functioning; that is, depression/anger management. In the December 2013 letter, symptoms of depression and anger management issues are described as causing minimal to moderate impacts on the Appellant's life. In addition, the cognitive/emotional issues are attributed to the Appellant's visual impairments; for example, experiencing significant anxiety when he needs to leave his home. In the January 2014 letter, the Appellant is described as struggling with anger management issues and depression which impair his sleep and impact his ability to manage his daily living tasks in a reasonable amount of time. Based on all of the information, the Panel finds that the Ministry reasonably determined that the evidence does not establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant submitted that because his vision is so significantly impaired, his ability to manage daily living activities is also significantly restricted. The three prescribed professionals reported that he is continuously restricted and needs assistance with activities requiring visual abilities such as meal preparation, daily shopping, paying rent and bills, filling prescriptions and using transit. He is also restricted in walking outdoors and using stairs because of his significant visual impairment.

The Ministry determined that the doctor and the nurse practitioner reported that many activities are performed independently. Therefore it concluded that the information did not establish that the Appellant's impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. In this case the doctor, the nurse practitioner and the social worker are the prescribed professionals. Daily living activities are defined in section 2(1) of the EAPWDR and are also listed in the PR and in the AR.

In the January 2014 letter, the doctor reproduced the daily living activity impact chart from the PR and reported that because of the Appellant's significant visual impairment his ability to manage meal preparation and daily shopping are continuously restricted. He is unable to read labels or negotiate depth perception when cooking or preparing to cook. To walk outside the home, use transportation, and manage finances he often needs his family's support because these activities are periodically restricted. His family helps him with any task requiring reading and writing which means continuous support with reading prices/labels, with shopping, with meal preparation, with taking transit (to read schedules/bus stop numbers) and managing finances. He also often needs support walking outdoors because of his impaired vision and depth perception restrictions. As for personal self care tasks, these can take significantly longer to complete. According to the professionals, all of these restrictions are due to the Appellant's severe visual impairment, a severe physical impairment.

The Panel finds that the January 2014 information is similar to the evidence in the AR and in the December 2013 letter; that is, that the Appellant needs continuous or periodic assistance with any

task requiring vision. When all of the professional reports are considered together, especially the specific comments describing the Appellant's significant visual impairment as significantly impairing all facets of his life, the Panel finds that the Ministry was not reasonable in determining that the Appellant's severe impairment does not significantly restrict daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted reports from prescribed professionals that because of his significant visual impairment he needs and receives continuous help from his family with meals and shopping, and periodic help when walking outside, taking transit, paying bills and other task requiring unimpaired vision. He also needs help when using stairs.

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.

The Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional confirming that because of restrictions in his ability to manage daily living activities, the Appellant requires help with those activities. In the January 2014 letter, there is information about the type and extent of assistance that the Appellant requires, namely that the Appellant's family or friends provide continuous assistance with meal preparation and daily shopping due to his significant visual impairment. He also receives periodic support from his family when walking outside, taking transit or paying bills. In the December 2013 statement, there is information that either a friend or his father assists him when walking in the community. The Appellant walks up or down stairs with a railing (not an assistive device as defined in this legislation) for assistance and another person to guide him. In addition because he can see only a very little, his family has to help him every day to navigate the bus system, go to the bank to pay his bills and read anything including school work. Similar reports of assistance needed were noted in the AR. Therefore, when all of the opinions of the prescribed professionals are considered, the Panel finds that the Ministry unreasonably concluded that it could not determine that the Appellant needs significant help from other persons to manage daily living activities or that the Appellant does not need significant help from other persons to manage 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 not reasonably supported by the evidence. Therefore the Panel rescinds that decision.