

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) March 12, 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 oral consent of the Appellant, a Ministry representative attended but did not participate in the hearing.

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

1. Appellant's PWD application consisting of:

- His self-report dated September 13, 2013.
- A physician's report ("PR") completed on October 24, 2013 by a doctor who indicated that the Appellant has been his patient for 10+ years and he has seen the Appellant between 2-10 times in the 12 months preceding the completion of the report.
- An assessor's report ("AR") completed on the same date by the same doctor who completed the PR, with a reference to a gastroenterologist report.
- March 23, 2010 letter from a gastroenterologist to the doctor who completed the PR.

2. Appellant's request for reconsideration, dated February 26, 2014, with a written statement by him.

Diagnoses

In the PR, the doctor diagnosed the Appellant with colitis onset 2010 and depression onset 2011.

Physical Impairment

In his self-report, the Appellant described his disability as follows:

- His disability is ulcerative colitis; a condition that affects his bowels and makes him use the bathroom all day.
- The disability affects his life because he goes to the bathroom 10 or more times in a day, which affects his ability to look for jobs or keep one because it could come at any time.
- He takes medication but it only works for about a month or so and his condition always comes back.
- Lately he has been going to the bathroom every day for 3 months straight.

In the PR, the doctor provided the following information about the Appellant's impairment:

- Has unpredictable bowel movements for up to several months; has periods of bowel stability lasting months.
- Bowel movements can be frequent and unpredictable with urgency.
- Is prescribed medications to control his colitis flare ups; will likely need medications periodically for the rest of his life.
- Does not require any prostheses or aids for his impairment.
- Functional skills – can walk unaided on a flat surface for 4+ blocks, climb 5+ stairs unaided, has no limitations with lifting or with remaining seated.
- Is seen every 2+ years by gastroenterologist.
- Presents limited physical strength/muscle bulk; "he does have frail underweight appearance."

In the AR, the doctor described the Appellant's impairments as "low weight, limited physical strength." He also assessed the Appellant as independent in his mobility and physical abilities.

In the March 2010 letter a gastroenterologist provided the following information about the Appellant:

- Has 5-6 bowel movements per day, often bloody without melena.
- Not sure if he has lost weight but is having nocturnal symptomatology.
- Had an endoscopic exam – evidence of contiguous colitis with evidence of erosive disease

and friable mucus; disease appeared to be relatively mild and affected at least the left side of the colon.

- Prescribed medication twice daily for 4 weeks – bowel habits went from 6 times daily to 2 times daily; all bleeding resolved; urgency was minimized; stools were solid;
- Abdomen is soft, no organomegaly; no signs of liver disease; has at least left sided colitis and suspected pan colitis.
- Will require long term therapy, including medications to continue long term for essentially complete control and normalization of symptoms; weight should be followed.
- Review and re-referral in 2 years time and a CBC liver enzyme test to be performed.

Mental Impairment

In the PR, the doctor provided the following information about the Appellant's impairment:

- Has no difficulties with communication.
- Has significant deficits with cognitive and emotional function in the areas of emotional disturbance (depression, anxiety) and motivation – “depression and symptoms related to depression.”

In the AR, the doctor reported the following impacts to cognitive and emotional functioning:

- Major impact to bodily functions; that is, toileting functions, poor hygiene.
- Major impact to motivation.
- Moderate impact to emotion, attention/concentration, executive; minimal impact to insight and judgment.
- No impact to consciousness, impulse control, memory, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.
- Added – “I think his depression is reactive from impact of colitis on his life.”

Daily Living Activities

In the PR, the doctor provided the following information about the Appellant's ability to manage daily living activities:

- Has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.

In the AR, the doctor reported the following:

- Has satisfactory ability in communication abilities; that is, hearing, writing, reading, speaking – adding “shy/withdrawn”.
- Is independent in all areas of mobility and physical ability; that is, walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.
- Is independent and requires no assistance in all areas of basic housekeeping, shopping, paying rent/bills, medications, transportation and personal care – with this comment by toileting – “urgency issue, resulting in lower self-esteem”.
- Is independent with meal planning; needs periodic assistance with food preparation, cooking and safe storage of food – adding “I don't think he ever really learned to cook”.
- For social functioning, is independent making appropriate social decisions, and for the following need periodic assistance: with developing and maintaining relationships – “withdrawn”; with interacting appropriately with others – “he has social limitations, limited conversational skills”; with dealing appropriately with unexpected demands; and, with securing assistance from others – “does not know how to ask for help”.
- Has marginal functioning with his immediate and extended social networks.

Help with Daily Living Activities

In the AR, the doctor reported that the help for the Appellant is provided by family. No assistive devices were noted and no assistance is provided by an assistance animal.

In his notice of appeal, the Appellant wrote that his condition affects his life every day. It is hard to go out and do stuff because he needs to be close to a bathroom. He goes over 15 times a day.

At the hearing, the Appellant said that he has a severe disease of his digestive system, colitis, which makes him go to the bathroom frequently and suffer from bad abdominal pain. These symptoms affect his concentration and slow him down. It is very time consuming to be going to the bathroom all the time. Because of this condition he also cannot work or look for work. The medication he is taking doesn't work now because it comes out when he goes to the bathroom. He said that the medication he takes is the same one referred to in the gastroenterologist's letter and did work then. But now the medications are less effective.

The Appellant said that he does not see the specialist that often because it is difficult for him to travel to the city where the specialist is and he needs another referral to see him. He said he saw the specialist once since 2010 and that was some time last year. It was after that time that the pills stopped working. His family doctor told him to keep taking the medication, but not every day. The Appellant said he takes the medications when the symptoms get really bad and he cannot control his bowl. He wants to make an appointment to see his family doctor to have the medication reviewed and maybe adjusted.

The Appellant also said that he is always tired and doesn't get out of bed for days because of depression. He has been taking medication for the depression, prescribed by his family doctor.

The Panel finds the information in the notice of appeal and the Appellant's statements at the hearing provide details about his conditions related to the information that the Ministry had at reconsideration. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the written information and the testimony as being in support of the evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry reviewed and reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because he did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:
2 (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either (A) continuously, or (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires (i) an assistive device, (ii) the significant help or supervision of another person, or (iii) the services of an assistance animal.

The “daily living activities” referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

2 (1) For the purposes of the Act and this regulation, “daily living activities” ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals; (ii) manage personal finances; (iii) shop for personal needs; (iv) use public or personal transportation facilities; (v) perform housework to maintain the person's place of residence in acceptable sanitary condition; (vi) move about indoors and outdoors; (vii) perform personal hygiene and self-care; (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances; (ii) relate to, communicate or interact with others effectively.

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

Severe Physical Impairment

The Appellant submitted that severe colitis, which causes bad abdominal pain and makes him go to the bathroom often, slows him down, affects his life every day and prevents him from working or looking for work. It is hard for him to go out and do things because he has to be near a bathroom.

In its reconsideration decision, the Ministry noted that it reviewed the Appellant's self-report and all aspects of the PR and the AR. Based on this information and the doctor's assessment of the Appellant being independent in all aspects of mobility and physical abilities, the Ministry determined that there was not enough evidence to establish a severe physical impairment.

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. As for finding work and/or working, the Panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The Appellant described his condition as ulcerative colitis, which makes him use the bathroom multiple times a day and causes bad abdominal pain. Because of this condition he is unable to go out and do things. The doctor who completed the PR and the AR diagnosed the Appellant with colitis and report that the Appellant had unpredictable bowel movements for up to several months. The Appellant also has periods of bowel stability lasting months. Although the doctor described the Appellant as having a frail, underweight appearance, the doctor noted that the Appellant's physical functioning was not impaired. For example, he can walk 4+ blocks unaided and climb 5+ stairs unaided and has no limitations with lifting. Also, the doctor reported that the Appellant independently manages daily living activities requiring physical abilities such as aspects of shopping, personal care and basic housekeeping. Therefore, based on this information, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish a severe physical impairment.

Severe Mental Impairment

The Appellant submitted that he suffers from depression, so that he is always tired and doesn't get out of bed for days. For about a year, he has been taking medication for depression, prescribed by his family doctor.

The Ministry reviewed the information from the doctor, including the reports that the Appellant has deficits with cognitive and emotional functions and the reported impacts on daily functioning. Based on the information provided by the doctor, the Ministry found that there was not enough evidence to establish a severe mental impairment.

The Panel's Findings

The doctor diagnosed the Appellant with depression. The Appellant said that depression makes him tired and he doesn't get out of bed for days. In the AR, the doctor noted impacts in cognitive and emotional functioning, including; major impact to bodily functions (toileting functions, poor hygiene) and to motivation; moderate impact to emotion, attention/concentration, executive; and, minimal impact to insight and judgment. For the other 8 listed impacts, the doctor reported no impact. He wrote that he thought the Appellant's depression is reactive from the impact of colitis on his life. The doctor reported no restrictions to daily living activities from any mental impairment, except that the Appellant needs periodic assistance with some aspects of social functioning. However, the doctor provided no information about what assistance is needed. The doctor also reported that the Appellant independently manages daily living tasks requiring mental abilities, such as making appropriate choices when shopping, budgeting, and paying rent and bills. Therefore, based on this evidence, especially that from the doctor, the Panel finds that the Ministry reasonably found that there is not enough evidence to establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant submitted that the colitis affects his daily life. He doesn't go out to do things or go to work because he needs to be near a bathroom. Bad abdominal pain also restricts him.

The Ministry noted that it relies on the medical opinion and expertise of the Appellant's doctor who reported that the Appellant independently manages his daily living activities, except for requiring periodic assistance with some aspects of meal preparation and social functioning. The Ministry also noted that no information was provided on how often the Appellant requires assistance from others. Therefore, the Ministry was not satisfied that the information provided demonstrates that a severe mental or physical impairment, in the opinion of a prescribed professional, significantly restricts his ability to perform 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 the Appellant's severe impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. In this case the Appellant's doctor of more than 10 years is the prescribed professional. Daily living activities are defined in section 2(1) of the EAPWDR and are also listed in the PR and in the AR.

The Appellant's doctor reported that the Appellant independently manages all daily living activities, except for needing periodic assistance with some areas of meal preparation and social functioning. However, the doctor provided no details about what type of assistance the Appellant needs or for how long. Based on this evidence from the doctor, the Panel finds that the Ministry reasonably determined that the information provided did not demonstrate that a severe mental or physical impairment, in the opinion of a prescribed professional, significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant's position is that he needs help with daily living activities.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine 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 direct and significant restrictions in his ability to manage daily living activities, the Appellant requires help with those activities.

In this case, the Appellant's doctor noted only that family helps the Appellant, but provided no details about the type or extent of help needed or provided for any daily living activities. Therefore, based on the opinion of the doctor, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help from other persons to manage his daily living activities.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence. Therefore the Panel confirms that decision.