

**PART C – Decision under Appeal**

The decision being appealed is the Ministry of Social Development and Social Innovation (the "Ministry") December 12, 2013 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 consisting of:

- A self-report completed by the Appellant.
- A physician's report ("PR") completed on February 18, 2013 by a doctor who indicated that he had seen the Appellant 3 times in the 12 months preceding the report.
- An assessor's report ("AR") completed on July 12, 2013 by a social worker who indicated that he has known the Appellant for 4 months and he has seen the Appellant between 2-10 times in the 12 months preceding the report.

2. Appellant's request for reconsideration with his written statement.

For this appeal, the Appellant submitted his written statement and a statement from a mental health counselor who he has been seeing since July 2013. The Panel was unable to read the signature of the mental health counselor; however, based on the information in the statement it appears that the counselor is also the social worker who completed the AR.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information submitted by the Appellant and his counselor because those statements provide additional details about his conditions and therefore is in support of the evidence that was before the Ministry at reconsideration.

### *Diagnoses*

In the PR, the doctor diagnosed the Appellant with hepatitis C, left knee ligament tear and tendonitis, and severe facial acne. The doctor provided no diagnosis of any mental health conditions.

### *Mental Impairment*

In the PR, the doctor reported no deficits with cognitive and emotional functioning and noted that the Appellant has no difficulties with communication.

In the AR, the social worker reported that the Appellant:

- Indicated that he gets depressed at times.
- Stated that he used hard drugs and alcohol in the past, and is now facing mental problems and low self esteem.
- Has the following impacts to his cognitive and emotional functioning from his impairment: major impacts to emotion, motivation and motor activity; moderate impact to impulse control and psychotic symptoms; minimal impacts to insight and judgement, attention/concentration, memory and language; and, no impacts to bodily function, executive and other emotional or mental problems; adding that the Appellant stated that he gets "command voices sometimes" that bother him.
- Is able to communicate satisfactorily with writing and good with speaking, reading and hearing, but his left ear is weak.

In his request for reconsideration, the Appellant wrote that his mental disability is depression. He feels sad for the way he is, not going anywhere, wondering what he did wrong and why he has these

disabilities.

*Physical Impairment*

In the PR, the doctor reported that:

- The Appellant's left knee injury was repaired with surgery and he requires a knee brace to support his joint.
- In terms of physical ability, the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, lift between 15-35 pounds and remain seated between 2-3 hours.
- The Appellant is independent in all aspects of mobility and physical abilities.

In the AR, the social worker reported that the Appellant's impairments are listed as left knee pain due to a motor vehicle accident in 1990 and lower back pain. Also, the Appellant stated that because of his knee and back pain he is unable to work. The social worker reported that the Appellant is independent in all aspects of mobility and physical ability.

In his PWD application, the Appellant wrote that:

- He is requesting disability assistance for his lower back, left knee and hepatitis C.
- He has had his lower back problem since childhood, his left knee problem after being hit by a car, and hepatitis C from experimenting with needles.
- He does not have enough money for vitamins, high protein whey and for all the fruits, vegetables and meats he needs.

In his request for reconsideration, the Appellant wrote that:

- He suffers from knee and back problems.
- His left knee was injured in a car accident; it aches in the winter and hurts in the summer. When he gets up the wrong way, his knee pops out of place; his knee hurts when he walks far or tries to.
- He has a brace that supports his knee, making his knee sore. He uses a cane once in awhile to get around when it's icy or when he is too weak to do anything.
- His lower back accident resulted in a hairline fracture in his lower back which really bothers him in the winter.
- At times when his back flares up, he gets pinched nerves and has to take muscle relaxers or he couldn't get around; when his back aches he can't do anything or go anywhere.
- When he is in pain, he is immobile; he couldn't take pain pills because of his hepatitis C.
- His appetite isn't good at times; he is weak all the time.

To support his appeal, the Appellant wrote that it is true that he does suffer from lower back pain, left knee pain and hepatitis. He can supply proof. He stated that he is not fraudulently trying to get assistance. The Appellant also wrote that he asked his mental health counselor to verify his condition. That counselor wrote that:

- He has been seeing the Appellant since July 2013.
- The Appellant's health problem is genuine.
- Due to his health conditions, the Appellant is not able to get a job nor can he stand 30 minutes steady to work at even lighter household jobs.
- The Appellant's income is not enough for him to live on; he has a special diet.

*Daily Living Activities*

In the PR, the doctor indicated that the Appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities. As for restrictions to daily living activities, the doctor reported:

- No restrictions in managing personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation and management of finances.
- Periodic restrictions with mobility outside the home, adding "mobility complains of L knee pain after walking more than half hour".

In the AR, the social worker wrote that the Appellant stated his impairments are a left knee that gets painful and lower back pain; also he gets depressed at times and feels lonely. The social worker reported that:

- The Appellant is independent in all aspects of daily living activities; that is, mobility and physical ability, personal care, basic housekeeping, shopping, meals, banking, budgeting, medications and transportation. For paying rent and bills, the social worker wrote that the Appellant does not have his own place at this time.
- When the Appellant gets back pain he states that it is very painful and he can do nothing.
- The Appellant is independent in all aspects of social functioning except for developing and maintaining relationships, adding "people make him angry so social contact min [minimal]".
- With respect to the Appellant's immediate social network – "used street drugs and alc [alcohol] for 15 years – it appears that this person is depressed".
- With respect to the Appellant's extended social network – "minimum social network".

*Help with Daily Living Activities*

The doctor reported that the Appellant uses a knee brace.

The Appellant reported that he uses a knee brace and a cane once in awhile.

The social worker wrote that the Appellant has very low self-esteem. He needs support and empowerment to live. The social worker also indicated "n/a" – not applicable for assistance provided by others, use of assistive devices or assistance from an assistance animal.

For this appeal, the Ministry provided no comments regarding the Appellant's written appeal submissions and additional information. It relied on 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's position is that he suffers from lower back pain, left knee pain and hepatitis C. These conditions restrict his mobility and when he is in pain he is immobile. He uses a knee brace and sometimes a cane. He submitted that he is unable to work or even do lighter household jobs.

In its reconsideration decision, the Ministry noted that employability is not a consideration for PWD designation, only the criteria in section 2(2) of the EAPWDA are. The Ministry indicated that it had reviewed all of the information provided in the PWD application and the information in the Appellant's request for reconsideration. The Ministry was not satisfied that all of this information established that

the Appellant has 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. The Panel also 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.

In this case, the doctor diagnosed the Appellant with hepatitis C and left knee ligament tear and tendonitis. The Appellant indicated that he suffers from knee and back problems, but the doctor did not diagnose or refer to any back pain anywhere in his report. The Appellant stated that when he is in pain, he is immobile, but he did not indicate how frequently that occurs. He also said he only uses a cane sometimes. The doctor, however, reported that the Appellant is independent in all aspects of mobility and physical abilities, except for periodic restrictions with outside mobility. The doctor also indicated that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided and lift between 15-35 pounds. In addition, the social worker noted that the Appellant is independent in all aspects of daily living activities requiring physical mobility and ability. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment.

### **Severe Mental Impairment**

The Appellant's position is that his mental disability is depression. He gets depressed at times, has low self-esteem, feels lonely, wonders what he did wrong and why he has these disabilities.

The Ministry reviewed all of the information and noted that the doctor reported no deficits with cognitive and emotional functioning, although the social worker reported major impacts to 3 areas of such functioning as well as moderate and minor impacts to others. Based on the information provided the Ministry determined that there is not enough evidence to establish a severe mental impairment.

### *The Panel's Findings*

The Appellant reported that he gets depressed at times. The social worker noted impacts to the Appellant's cognitive and emotional functioning, including the Appellant stating that he gets command voices sometimes. But the social worker did not indicate how these impacts affect the Appellant's ability to function on a daily basis. In addition, there is no diagnosis from the doctor of depression or any mental health condition or any report of deficits in cognitive and emotional functioning from the doctor. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that there is not enough evidence to establish that the Appellant has a severe mental impairment.

### **Restrictions to Daily Living Activities**

The Appellant's position is that he needs financial help because his current income is insufficient to meet his living expenses, especially for the diet he requires for his illness. He is unable to work because of his medical conditions, including the restrictions to his physical mobility.

The Ministry noted that it reviewed all aspects of the PR and the AR; that is, the reports from the prescribed professionals. The Ministry determined that based on the information provided by them, it does not have enough evidence to confirm that the Appellant's impairment significantly restricts his ability to perform his daily living activities 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. The Appellant's doctor 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 physician's report part of the PWD application and with additional details in the assessor's report part of the PWD application. Therefore, a prescribed professional completing these forms has the opportunity to indicate which if any daily living activities are significantly restricted by the Appellant's impairments, continuously or periodically for extended periods. The prescribed professional can also report what help the Appellant may need.

In the Appellant's circumstances, the doctor reported no restrictions in managing daily living activities, except for periodic restrictions with outside mobility. The social worker reported that the Appellant manages all of his daily living activities independently, although he experiences some limitations when he gets back pain. In the AR, there are comments from the social worker about impacts to the Appellant's social networks and ability to deal with people, but with only the statement that he needs support and empowerment to live. Based on this evidence from the prescribed professionals, the Panel finds that the Ministry reasonably determined that the information provided did not establish that a severe mental or physical impairment 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 support and financial assistance. He uses a knee brace and sometimes a cane for mobility. Also, he is seeing a mental health counselor.

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. The doctor reported only that the Appellant uses a knee brace. The social worker stated only that the Appellant needs support and empowerment to live, but provided no other information about help that the Appellant might need. Therefore, the Panel finds that based on the reports from the prescribed professionals and because the evidence did not establish that daily living activities are significantly restricted, the Ministry reasonably concluded that it could not determine that the Appellant needs significant help from other persons to manage 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.