

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) April 16, 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 consisting of:

- His self-report dated October 18, 2013.
- A physician's report ("PR") and an assessor's report ("AR") both completed by the Appellant's family doctor who indicated that the Appellant has been a patient for 20 years. The PR was completed on October 18, 2013, but no date of completion was indicated on the AR. In the AR, the doctor reported that he had seen the Appellant 11 or more times in the past year.
- List of medications with dosage.
- Test results, including a May 8, 2013 angiogram indicating the Appellant has bilateral diabetic maculopathy.

2. Appellant's request for reconsideration with a new page 11 of the PWD application – the daily living activities report part of the PR - completed by the same family doctor in March 2014, a recommendation from that doctor for a bathroom grab bar and shower stool, a physiotherapy prescription and a hearing test report indicating mild to moderate unilateral hearing loss.

For this appeal the Appellant submitted:

- A statement in his notice of appeal indicating that he had been telling his doctor for the past 2 years about his difficulty with walking and seating, dizziness and vomiting. The doctor did not do anything, saying that he does not live with the Appellant and does not have proof. Therefore, the Appellant obtained his health records from the hospital for 2012-2013. The Appellant wrote that he is still getting massages from a chiropractor. He has lots of pain in his left arm and leg. He needs a grab handle for the shower and a stool, hearing devices, supportive shoes, help for foot care and cutting his nails, and transportation.
- A statement from him indicating that in 2012 and 2013 ambulances came to his home because he was very, very dizzy, heavily vomiting and nauseous. In 2013, he was in the emergency room for 8-10 hours.
- Copies of an emergency care clinic records for July 27, 2013 including a report that indicated the Appellant was attended to for chest pain, cardiac features and vomiting; a normal ECG; and a discharge lab report.
- An ambulance care report dated July 27, 2013 indicting vomiting by the Appellant.
- Copies of an emergency care clinic records for March 31, 2012 in which the physician's notes are illegible, a normal ECG, and a discharge lab report.
- An ambulance care report dated March 31, 2013 indicting dizziness.
- A letter dated April 18, 2014 from a doctor of chiropractic, stating that the Appellant has been receiving treatments at that clinic since 2007, and providing information about the Appellant's conditions and effects on his daily functioning. The letter did not specify what treatments the Appellant was getting or how frequently the Appellant saw this doctor; for example, annually, monthly or weekly.
- Prescription Receipt dated April 24, 2014 for pain medication prescribed by the doctor of chiropractic.

The Panel finds that the documents submitted with the notice of appeal provide information about the Appellant's medical conditions and effects on him which relate to the information that the Ministry had at reconsideration. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits all of these as being in support of the evidence that was before the Ministry at reconsideration.

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

The Panel has summarized the relevant evidence in the appeal record as follows.

### *Diagnoses*

In the PR, the doctor diagnosed the Appellant with type 2 diabetes, hypertension, Meniere's disease, diabetic retinopathy with decreased vision, degenerative spinal arthritis and diabetic nephropathy.

### *Physical Impairment*

In his self-reports the Appellant described his conditions and disability as follows:

- Has ongoing medical problems hindering his day to day activities; that is, vision, hypertension, diabetes, body aches and pain (shoulders, hips and lower back), muscular cramps, and vertigo which makes him very, very dizzy and vomiting.
- Can't drive and can't get out of the house, preventing him from working and leads to depression.
- When writing for more than 5 minutes, his shoulder pains a lot.
- When he walks for half an hour, his hips and lower back give him lots of pain.
- Can't sit down and lace up his shoes because his hip and back pains a lot.

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

- Advanced diabetic retinopathy and nephropathy – secondary to type 2 diabetes, are causing decreased vision which will progress.
- Decreased circulation, is leading to slow healing and poor exercise tolerance, and shortness of breath on exertion.
- Meniere's causes dizziness, hearing loss and tinnitus.
- Functional skills – can walk unaided on a flat surface 2-4 blocks, climb 5+ stairs unaided, can lift 15-35 lbs., and has no limitations in remaining seated.
- Is not restricted in mobility inside or outside the home.
- Likely to deteriorate if diabetic degeneration continues.
- Vision problems noted in the amended page 11 of the PR.

In the AR, the family doctor described the Appellant's physical impairments as:

- Vision reduced and muscular skeletal problems, shoulder/back.
- Independently able to walk indoors and outdoors, climb stairs, stand, lift, and carry and hold.

In the April 18, 2014 letter, the chiropractic doctor wrote that the Appellant:

- Has complained of continuous right shoulder pain, neck, mid back, low back and left hip pain; referral pain into his left leg, alongside numbness and tingling in his left foot.
- Has complained of vertigo and frequent headaches which interfere with his daily activities.
- Is taking anti-inflammatory medications, medications for diabetes and high blood pressure.

### *Mental Impairment*

In his self-report, the Appellant wrote that because of his conditions, he can't drive or go out of the house, and he is prevented from working, all of which has led him to feel depressed. At times he has memory problems, remembering past events and taking medications on time.

The family doctor did not diagnose any mental health condition or describe any mental impairment in these documents. That doctor reported that the Appellant's ability to communicate in all areas (speaking, reading, writing and hearing) was good. That doctor also indicated that there were no impacts to any aspect of cognitive and emotional functioning, that all areas of social functioning are managed independently and the Appellant has good functioning with his social networks.

In the revised page 11 of the PWD application, social functioning is checked as both not restricted and continuously restricted, and the family doctor wrote "unsure" regarding the impacts to social functioning. The family doctor also wrote "depression problems", but provided no other information about the severity or impacts of such problems or whether any medication/treatment was prescribed.

### *Daily Living Activities*

The Appellant reported that:

- He can't drive or go out of the house, and he is prevented from working.
- His mother helps with cooking food and washing clothes; other people help with grocery shopping and getting to doctor's appointments.
- He needs a grab bar for the shower and a stool, a hearing device, supportive shoes, help for foot care and transportation.

In the PR, the family doctor reported that:

- The Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- Personal self care, meal preparation and basic housework are periodically restricted, adding "when shoulder and bone pain is severe"; the degree of restriction is "moderate".
- Management of medications, daily shopping, mobility inside and outside the home, use of transportation and management of finances are not restricted.

In the AR, the family doctor reported that the Appellant:

- Independently manages all aspects of basic housekeeping, shopping, paying rent and bills, medications and transportation.
- Independently manages dressing, grooming, toileting, transfers in and out of bed, on/off chairs - aspects of personal care, but needs periodic assistance with bathing, feeding himself and regulating his diet – no details were provided about the type or extent of assistance needed.
- Independently manages meal planning, but needs periodic assistance with food preparation, cooking and safe storage of food – no details were provided about the type or extent of assistance needed.
- Independently manages all areas of social functioning, and has good functioning with his immediate and extended social networks.

In the revised page 11 of the PWD application dated March 2014, the family doctor reported that:

- Personal self care – foot, meal preparation, management of medications, basic housework, daily shopping, and mobility outside the home are continuously restricted.
- Mobility inside the home is not restricted.

- Use of transportation and management of finances are not restricted, but the doctor checked the “continuous” boxes.
- Social functioning is not restricted, but the doctor added “unsure”.
- Regarding the degree of restriction, the doctor noted: “this man is unemployable due to his various medical issues- permanent.”

In the April 18, 2014 letter, the chiropractic doctor wrote that:

- The conditions the Appellant is suffering from restrict his daily functioning and he is unable to work.
- The Appellant would benefit from someone helping with meal preparation, transportation and helping with other activities that he is unable to do at home.
- The Appellant would need help with activities of daily living continuously.

#### *Help with Daily Living Activities*

The Appellant wrote that:

- His elderly mother cooks for him, washes his clothes and he gets people to help with grocery shopping or getting to the doctor’s. His mother is aging, making it difficult for her to take care of him.
- He needs a grab bar for the shower and a stool, a hearing device, supportive shoes, help for foot care and transportation.

In the PR, the family doctor wrote that the Appellant’s mother currently assists him and in the AR, reported that family helps him. No help is provided by an assistance animal.

With the request for reconsideration, the family doctor wrote that the Appellant would benefit from a grab handle for the shower and a shower stool. In the revised page 11, that doctor added that the Appellant needs daily assistance with cooking and food preparation.

In the April 18, 2014 letter, the chiropractic doctor wrote that the Appellant:

- Would benefit from assistive devices, such as supportive shoes (custom orthotics), shower chair, bathroom grab bar, extra pillows etc.
- Would benefit from someone helping with meal preparation, transportation and helping with other activities he is unable to do at home.
- Would need help with activities of daily living consistently.

## 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

In October 2013, the Appellant’s family doctor of 20 years, completed both the PR and AR portions of the Appellant's PWD application and reported periodic restrictions in some aspects of personal care, meal preparation and basic housekeeping. Subsequently, that same family doctor provided a revised page 11 of the PWD application (the daily living activities checklist), dated March 2014. In that latter report, the family doctor checked the boxes for continuous restrictions to the daily living activities listed there, except for mobility inside the home. The Panel notes that the family doctor provided no explanation for these changes in restrictions from October to March 2014, except for his comment that the Appellant is unemployable due to his various medical issues. That doctor also added that the Appellant has depression problems, but again no explanation is provided about this added condition. Because there is no information from this family doctor about the reason for the changes to his

reports and no explanation about any changes in the Appellant's circumstances from October 2013 to March 2014, the Panel gives the March 2014 report less weight than the family doctor's original reports of October 2013.

As for the chiropractic doctor's letter dated April 18, 2014, the Panel finds that that doctor provided no information about what conditions the Appellant was being treated for by the clinic, what type of treatments he was receiving, how often that doctor or someone from the clinic saw the Appellant and on what basis that doctor provided his opinion. Therefore, the Panel gives this letter less weight than the reports from the family doctor who has seen the Appellant for 20 years.

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 his medical conditions hinder his daily functioning, so that he needs help with cooking and going to the store and doctors. He described difficulties with his vision, hypertension, diabetes, aches and pains (shoulder, hips, back and muscular cramps), as well as feeling dizzy and nauseous. According to the Appellant, these conditions prevent him from driving, from going out of the house, and he has difficulty bending and lacing his shoes. The Appellant provided medical reports, additional information from his doctor of 20 years and information from a second doctor as evidence of his impairment.

In its reconsideration decision, the Ministry wrote that based on its review of all the information provided it determined that the Appellant experiences minimal limitations to his physical functioning; for example being able to walk more than 4 blocks unaided and lift up to 35 lbs. The Ministry determined that the assessments in the PWD application, including the information in the reconsideration package speak to a minimal degree of physical impairment, not 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 for PWD designation in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The family doctor, who completed the PWD application, diagnosed the Appellant with type 2 diabetes, hypertension, Meniere's disease, diabetic retinopathy with decreased vision, degenerative spinal arthritis and diabetic nephropathy. The doctor noted that the decreased circulation experienced by the Appellant leads to slow healing and poor exercise tolerance, and shortness of breath. However, as to how these conditions affect the Appellant's daily functioning, the family doctor noted that the Appellant can walk 2-4 blocks unaided, climb 5+stairs unaided and lift 15-35 lbs. The

family doctor also noted, in the original AR, that the Appellant independently manages all aspects of mobility and physical ability. The only information the family doctor provided in the March 2014 report about assistance the Appellant might need, was a note that the Appellant would benefit from shower aids and needs help with meal preparation.

The Appellant described his medical conditions as difficulties with his vision, hypertension, diabetes, pain in several parts of the body, and vertigo which causes him to be very dizzy and nauseous. He submitted that these conditions hinder his day to day activities. He wrote that he can't drive or go out of the house, walking for half an hour gives him lots of pain in his hips and lower back. He has lots of pain in his left arm and leg. His mother has to help him and he needs assistive devices.

The Panel finds that the evidence is that the Appellant has several serious health conditions; however, the evidence from the family doctor indicates that the Appellant can walk 2-4 blocks unaided, can lift between 15-35 lbs and has no limitations with seating. In addition to his diagnoses, the family doctor wrote that the Appellant has vision problems and muscular skeletal problems, but also reported that the Appellant can independently walk indoors and outdoors, climb stairs, stand, lift, and carry and hold. The only recommendation for assistive aids from the family doctor was a note that the Appellant would benefit from shower aids and that he needed foot care. The evidence from the Appellant does not contradict the information from his doctor of 20 years. The Appellant wrote that he feels pain after walking for half an hour, but did not state that he uses any aids to walk, climb stairs or to stand. Although the Appellant wrote that he gets very dizzy and nauseous, the family doctor did not report how those conditions impair the Appellant's functioning. That doctor also did not indicate how the Appellant's description of pain in his shoulder, back and hip, and hearing problems restrict the Appellant's daily functioning. Therefore, the Panel finds that based on the information provided, that the Ministry reasonably determined that the evidence did not establish that the Appellant has a severe physical impairment.

### **Severe Mental Impairment**

The Appellant described feeling depressed because of his medical conditions, he can't drive or go out or work. He also wrote that at times he has memory problems, sometimes forgetting to take his medications on time.

Based on its review of the information provided, including the family doctor's report of no significant deficits with cognitive and emotional functioning, the Ministry could not determine that the Appellant has a severe mental impairment.

### *The Panel's Findings*

Although the Appellant wrote that he felt depressed, the Panel notes that he linked the feelings of depression to his physical health. The Panel also notes that the family doctor did not diagnose the Appellant with any mental health conditions and reported that the Appellant has no deficits in his cognitive and emotional functioning. In the October 2013 reports, the family doctor reported that the Appellant independently manages all aspects of social functioning. The family doctor wrote that he was unsure about social functioning in the March 2014 report, but provided no details. Therefore, the Panel finds that the Ministry reasonably determined that the information provided does not establish a severe mental impairment.



**Restrictions to Daily Living Activities**

The Appellant submitted that his health conditions impact his day to day functioning. He has trouble bending over to put on his shoes. He can't drive or go out of the house. His mother has to cook and do laundry for him. Friends help him shop and go to appointments. Also, his doctor recommended assistive devices for the shower.

The Ministry wrote that it acknowledges that the Appellant has certain limitations resulting from his medical conditions; however, there was not enough evidence provided to establish that a severe impairment significantly restricts the Appellant's 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 family doctor of 20 years and the chiropractic doctor are prescribed professionals; however, as noted above the Panel gave more weight to the evidence from the family doctor. 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 family doctor's initial reports about restrictions to the Appellant's ability to manage daily living activities, the family doctor indicated that the Appellant independently manages all daily living activities, except for periodic restrictions in only some areas of personal care and meal preparations. That doctor noted that the degree of restrictions was moderate and occurred when shoulder and back pain is severe, but provided no information about how often help was needed or to what extent. In his later report, the family doctor wrote that the Appellant needs assistance with cooking and food preparation daily, which the Appellant also stated. That doctor also reported that the Appellant independently manages all areas of mobility and physical ability. Therefore, based on the reports from that family doctor, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish that a severe impairment directly and 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. His mother provides help with meals and laundry, and friends help with transportation. He also needs the assistive devices he described.

The Ministry's position is that the use of a grab handle for the Appellant's shower and a shower stool is not indicative of a significant restriction giving rise to a significant need for assistive devices. Also, because the evidence did not establish that daily living activities are significantly restricted, the Ministry could not 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.

The Panel notes that the family doctor wrote that the Appellant would benefit from a grab bar and shower stool, but not that the Appellant needs these items. That doctor also did not indicate that the Appellant needed any more help than what his mother was providing, which is preparing meals. It is also not clear from the information provided how often friends help with transportation. Therefore, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant's daily living activities are directly and significantly restricted and it therefore could not determine that significant help is required with 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 reasonably supported by the evidence. Therefore the Panel confirms that decision.