

### 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:

- Appellant's self-report dated October 17, 2013.
- Physician's Report ("PR") and Assessor's Report ("AR") both completed on November 22, 2013 by a doctor who indicated that he knew the Appellant for 6 months and he had seen the Appellant between 2-10 times in that period of time.
- Radiology/echo report dated November 20, 2013 attached to the doctor's reports.

2. Appellant's request for reconsideration with a statement from his doctor dated April 14, 2014.

For this appeal, the Appellant submitted a statement describing the effects from his heart attack and a Functional Capacity Evaluation from a rehabilitation service, dated September 4, 2010. According to summary of findings/conclusions in that report, the evaluation focused on the Appellant's cardiovascular functioning, his reports of chest pain and disability and was a good indicator of his then physical functioning within his cardiovascular tolerance.

The Panel has reviewed the Appellant's appeal statement and the evaluation report. Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits both because they provide information about the Appellant's cardiac condition and how that impacts the Appellant's functioning, consistent with and in support of the evidence the Ministry had at reconsideration.

The Panel has summarized the relevant evidence from these two documents as well as from the appeal record as follows.

### *Diagnoses*

In the PR, the doctor diagnosed the Appellant with ischemic heart disease (cardiomyopathy), heart attack myocardial infarction March 2009 and congestive heart failure.

### *Physical Impairment*

In his self-reports, the Appellant wrote that:

- He had a heart attack and has followed the doctor's instructions as best he could.
- He is still taking medications and will be for the rest of his life; the damage to his heart can't be repaired.
- He gets light headed when he bends over for too long when cleaning his home and gets dizzy spells.
- He has heart murmurs which slow him down and he gets quite weak.
- He is only allowed to lift 15 lbs. maximum; he tried heavier amounts but he had heart murmurs causing him to stop.
- As for walking, he is slowly getting better, walking 4-5 blocks before he has to stop and rest and use his nitroglycerine spray to calm his heart down. This causes unwanted stress.
- He has learned a diet that helped him lose weight, but is still a struggle causing unwanted stress and depression.

- He keeps looking for work, but there are a lot of road blocks; he worked as a laborer in jobs where he had to move at a constant rate of speed and heavy lifting was involved, which he is now unable to do because of his heart.
- He would like to go back to school for a new career path.
- In job applications he has to indicate that that he had a heart attack and then he thinks he is rejected because he is a risk to the company, adding more stress and depression.
- A third of his heart is damaged beyond repair, affecting his blood flow to 35-40%, making him become dizzy, light headed and faint.

The functional evaluation report provided the following assessment of the Appellant's conditions:

- He was riding his bike everywhere as a means of transportation.
- He reported chest pain with prolonged walking or repetitive lifting.
- He was able to assume a sustained crouch and squat position, and repeats of these.
- He had good ambulatory ability over short distances, such as a 6 minute walk.
- Based on his cardiovascular status and risk for another cardiovascular event; a safe lifting weight for the Appellant was 20 lbs. with an ability to carry over a 50 foot distance.

In the PR, the doctor reported that the Appellant:

- Takes medications and/or treatments and the anticipated duration is lifelong.
- Does not require any prostheses or aids for his impairment.
- Can walk unaided on a flat surface for less than 1 block; can climb 2-5 stairs unaided; has no limitations when remaining seated; and his limitations in lifting are unknown.
- Is not restricted in mobility inside or outside the home.
- Has poor cardiac ejection fraction following his heart attack, and referred to the radiology/echo report.

In the AR, the doctor described the Appellant's physical impairments as external dyspnea and leg swelling. The doctor reported that the Appellant independently manages walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The doctor wrote that the Appellant is "physically impaired by poor cardiac function following heart attack."

In the request for reconsideration, the doctor wrote that the Appellant has poor heart function due to damage from a heart attack. He is not fit for physical labor and has no qualifications. The Appellant's work experience is manual labor which he will not be able to do again.

### ***Mental Impairment***

In his self-report, the Appellant wrote that the diet that helped him lose weight, is still a struggle causing unwanted stress and depression. He also stated that he thinks he has been rejected for jobs because he had a heart attack and is a risk to a company, adding more stress and depression.

In the PR, the doctor did not diagnose any mental health conditions and reported that the Appellant has no significant deficits with cognitive and emotional function. In the AR, the doctor described the Appellant's impairment as emotional depression and lethargy, but provided no diagnosis of a mental health condition or other information about a mental impairment. The doctor also indicated that:

- The Appellant's ability to communicate (speaking, reading, writing and hearing) is good.

- There are no impacts to any areas of cognitive and emotional functioning.

*Daily Living Activities*

In the PR, the doctor reported that the Appellant:

- Has been prescribed lifelong medications and/or treatments which interfere with his ability to perform daily living activities.
- Has no restrictions in his ability to manage personal self-care, meal preparation, medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and finances.
- Is not impaired in his social functioning.

In the AR, the doctor reported that the Appellant:

- Independently manages all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.
- Independently manages all aspects of social functioning.
- Has good functioning with his immediate and extended social networks.

*Help with Daily Living Activities*

In the AR, the doctor indicated that the Appellant is “fully independent”, with no assistance provided by other people or assistance animals.

For this appeal, the Ministry relied on 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 a third of his heart is damaged beyond repair, making him become dizzy, light headed and faint. Heart murmurs slow him down and he gets quite weak. He is only allowed to lift 15 lbs. and as for walking, he can walk 4-5 blocks before he has to stop and rest.

In its reconsideration decision, the Ministry indicated that it considered the Appellant's self-report and the information from the doctor, noting that the doctor reported that the Appellant can independently walk indoors and outdoors, stand, lift, carry and hold. The Ministry found that there was not enough

evidence to determine 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.

As for finding work and/or working, the Panel notes that employability is not a criterion for determining eligibility 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.

With respect to the evaluation report the Appellant provided, the Panel gives that little weight because it is 4 years old and the Appellant's more recent descriptions of his impairments indicate that his health may have worsened since then. The Appellant described his heart condition as making him dizzy, light headed, weak and faint. He is only allowed to lift 15 lbs. He can walk 4-5 blocks before he has to stop and rest. The Appellant's doctor reported the Appellant's physical functioning abilities as being somewhat more restricted; that is, the Appellant is able to walk less than 1 block and climb 2-5 stairs unaided. The doctor diagnosed the Appellant with cardiac conditions and described the Appellant as having poor heart function. He also described the Appellant as physically impaired. However, when assessing the impacts of the Appellant's physical impairment on daily functioning, the doctor reported that the Appellant independently manages walking indoors and outdoors, climbing stairs and lifting, as well as all activities requiring physical functioning such as personal self care and basic housekeeping. The doctor described the Appellant as being fully independent and did not indicate that the Appellant needed any help from other people, from any assistive devices or an assistance animal. The Panel also notes that the Appellant provided no information at all about any help he needs with daily functioning. Therefore, the Panel finds that the Ministry reasonably determined that there was not enough information to establish that the Appellant has a severe physical impairment.

#### **Severe Mental Impairment**

The Appellant described feeling stressed and depressed when dealing with his physical restrictions. The Ministry found that the doctor did not provide enough information to determine that the Appellant has a severe mental impairment.

#### *The Panel's Findings*

The Panel finds that the only evidence of depression is the Appellant's note about feeling depressed when he bent down and got dizzy, and about his inability to work. The doctor referred to lethargy in the AR, but gave no information regarding any mental health condition, no diagnosis of any mental health condition and specifically reported no impacts to the Appellant's cognitive and emotional functioning or social functioning. Therefore, the Panel finds that the Ministry reasonably determined that there was not enough evidence to determine that the Appellant has a severe mental impairment.

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

The Appellant provided no information about restrictions to daily living activities, except for limits in

his ability to walk and lift

The Ministry noted the doctor's report that the Appellant is not restricted in his ability to manage any of his daily living activities and is fully independent. Therefore, the Ministry found that there was not enough evidence to establish that the Appellant's impairment directly and significantly restricted his ability to manage 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 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 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 for the doctor to assess.

Although the Appellant's doctor wrote that the Appellant is physically impaired by poor cardiac function and that he has been prescribed lifelong medications which interfere with his ability to perform daily living activities, the Appellant's doctor reported that the Appellant independently manages all daily living activities, even adding the comment "fully independent". Also, the doctor reported no assistance from other people, no use of any assistive devices or an assistance animal. There was also no information from the Appellant about restrictions to his daily living activities that require him to have help. Therefore, the Panel finds that the Ministry reasonably determined that there was not enough information to determine that the Appellant's impairment directly and significantly restricts his daily living activities continuously or periodically for extended periods.

#### **Help with Daily Living Activities**

The Appellant provided no information about any help he needs or any assistive devices he uses to manage his 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. It noted that the Appellant's doctor indicated that he did not require the use of any assistive device.

#### *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 provided no information about any help he gets or needs. The Appellant's doctor reported that the Appellant is fully independent and does not use any assistive devices or an assistance animal. Therefore, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help 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.