

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 6, 2014, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However the ministry was not satisfied that the appellant has a severe physical or mental impairment or that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLAs, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform his DLAs.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2 (2)  
Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR), section 2

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A ministry form, Medical Report-Employability, completed by the appellant's physician dated July 25, 2013. The physician diagnoses the appellant with coronary artery disease and ventricular dysfunction. His condition is chronic, the appellant's exercise capacity is limited, and he is unfit for construction work.
- A self-report completed by the appellant dated November 29, 2013. The appellant writes that he has had heart problems for 4 years and this condition causes him to fatigue easily. He is only able to walk up to ½ of a block and is only able to sit or stand for 5 to 10 minutes. He relies on the assistance of others for his daily living activities including self-care, basic housekeeping, shopping, meal preparation, paying his rent and bills, as well as transportation. He is unable to carry a full load of laundry and tends to slack on his housekeeping with things like mopping and scrubbing bathtubs. He takes significantly longer with personal care and shopping and he has to use the car door and seat for support getting in and out of a vehicle. He adds that his communication is at a grade three/four level so he has always relied on his mother to assist him with reading and writing. He writes that he requires frequent breaks when moving around his house and that he uses a handrail when climbing stairs.
- A letter to the appellant's physician written by the appellant's advocate dated November 29, 2013. The advocate writes that she and the appellant have completed the Persons with Disabilities (PWD) Application and attached it to the letter for the physician's reference including how the appellant perceives his restrictions to his daily living activities. The advocate adds that she has attached a self-report letter that the physician is asked to indicate whether or not he agrees with several statements regarding the appellant's limitations.
- An undated physician's report and assessor's report completed by the appellant and his advocate as referenced in the advocate's letter. The information is very similar to that in the final reports submitted with the PWD application.
- A physician's report completed by the appellant's physician dated December 11, 2013. The physician's report diagnoses the appellant with ischemic heart disease/congestive heart failure and depression. In the health history, the physician indicates that the appellant is unable to exert himself without SOB [shortness of breath] or chest pain. The physician also referred to the appellant's depression as severe, with decreased mood and energy. The physician indicates that the appellant is not on prescription medications that interfere with his ability to perform daily living activities, does not require prosthesis or aids for his impairment, that his impairment is likely to last more than two years, that he can walk 2-3 blocks unaided on a good day, can walk a half a block unaided on a bad day, he cannot climb stairs unaided since he uses a handrail when using stairs, has no limitations to lifting, can remain seated for 5-10 minutes maximum, and that he has no significant deficits with emotional and cognitive functioning. The physician has had the appellant as a patient for five years and has seen him 2-10 times in the past 12 months.
- An assessor's report completed by the appellant's physician dated December 11, 2013. The report states that the appellant lives alone, that he functions at a grade three/four level in reading and writing, he takes significantly longer than typical and uses an assistive device with walking indoors as he uses the support of a chair and takes breaks getting around the house. He requires continuous assistance from another person with walking outdoors and is unable to walk more than a half a block on a bad day. He uses handrails to climb stairs, he is independent in lifting carrying and holding, and he has a bad day at least once per week. The

report continues that the appellant's condition has no impact on his cognitive or emotional functioning, he is independent all categories of daily living activities with the following exceptions for some tasks of daily living activities. He takes longer to dress (2 times longer), transfer in and out of bed and chairs (2 times longer), clean his house, go to and from store (2 times longer) using an assistive device, and gets in and out of a vehicle using an assistive device. The report states he requires a shopping cart to do his shopping and that he uses the seat or door for support when he gets out or into the car. The report states that he requires continuous assistance in meal planning, cooking, and preparing his meals because he doesn't plan anything out but rather he relies on ready-to-eat microwave meals. He also requires continuous assistance in budgeting and paying his bills because he is currently going through bankruptcy and is behind on his bills. The assessor's report states his condition has no effect on his social functioning, that he receives assistance for his daily living activities through friends, and no assistance is provided through the use of assistive devices nor does he use an assistance animal.

- A letter written by the appellant's advocate to the appellant's physician asking him to agree or disagree with several statements about his condition dated April 22, 2014. The physician agrees that the appellant's depression has a major impact on his ability to sleep, motivation, and his language comprehension. The physician agreed that the appellant requires continuous assistance in meal planning, food preparation, cooking (that he relies on easy prepared/microwavable foods), budgeting, paying rent and bills (he is going through bankruptcy), and social functioning (he isolates himself). The physician adds that the appellant has a severe social impairment and difficulties.

The appellant was not in attendance at the hearing. After confirming he had been notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

In his Notice of Appeal dated May 13, 2014 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he believes the right information is not being communicated, including all his hospital reports and "7 heart bypassed." He wrote that he "cannot keep on living this way."

At the hearing the ministry stood by its reconsideration decision and reviewed the details contained in the report. The ministry noted that the April 22 letter from the advocate introduced a new impairment that had not been previously mentioned. It read that the appellant has a severe social impairment and difficulties. The ministry noted that this is inconsistent with the physician's report and the assessor's report and that no further explanation or details were provided about when this condition began nor was there any explanation about the effect this condition has on the appellant.

The ministry explained that it found that although the appellant's physician states it takes him twice as long as normal to complete some of his daily living activities (DLA's) such as dressing, cleaning, getting in/out of bed, the ministry does not find that this delay qualifies as significantly longer as required by the legislation.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant's impairment is not severe and that his impairment does not directly and significantly restrict his daily living activities either continuously or periodically for extended periods of time and, as a result of those restrictions, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform his DLAs.

To be considered a person with a disability the legislation requires a person to provide evidence to satisfy the legislative criteria. These are detailed in EAPWDA Section 2 (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.

The definitions for the above legislation are contained in the EAPWDR:

- 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.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practice the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or

- (b) acting in the course of the person's employment as a school psychologist by
- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
  - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

The appellant argues that his impairment is severe and it directly and significantly affects his daily living activities either continuously or periodically for extended periods of time and that he requires assistance of another person or the use of an assistive device.

It is the ministry's position that the appellant meets the age requirement and that his impairment is likely to last more than two years. The ministry maintains there is insufficient evidence to establish that his impairment is severe, and directly and significantly restricts his daily living activities either continuously or periodically for extended periods to the extent that he requires the aid of an assistive device or another person.

With respect to the reasonableness of the ministry's decision that the evidence does not establish that the appellant has a severe mental impairment the panel finds that the appellant has been diagnosed with depression described as 'severe'; however in the assessor's report the physician indicates the appellant's condition has no impact on cognitive and emotional functioning and no impact on social functioning. In the physician's report the physician writes there are no significant deficits with cognitive and emotional functioning. The panel notes that on page two of the letter written by the advocate, the physician agrees with the statement that the appellant needs continuous assistance with social functioning and the physician notes he has "severe social impairment and difficulties" however there are no details or commentary about why he has changed from having no impairments in social functioning to being severely socially impaired. While the physician agreed in the letter that there are major impacts to the appellant's cognitive and motional functioning in the areas of sleep disturbance, motivation and language, there is also no explanation for the change from his initial report of no significant deficits to cognitive and emotional function. It is not possible to determine if there has been a change in his condition, if he has developed a new condition, or if the physician has altered his diagnoses. The panel finds that the ministry was reasonable to determine that there is not sufficient evidence to establish that the appellant has a severe mental impairment.

With respect to the reasonableness of the ministry's decision that the evidence does not establish that the appellant has a severe physical impairment the panel finds that there are some conflicts between the different reports from the physician and that the ministry was reasonable to determine that the appellant does not have a severe physical impairment. The panel notes that both the physician's report and the assessor's report state that the appellant has no limitations lifting, carrying, and holding however the assessor's report reads that he cannot carry a full laundry basket and he requires the use of a shopping cart when shopping. While the panel recognises that these statements can be seen as a conflict, the panel is satisfied the ministry's determination the appellant's need to carry a half-full laundry basket and use a shopping cart does not constitute a severe impairment was reasonable. The physician indicated in the physician report that the appellant experiences shortness of breath or chest pain on exertion, with no explanation for the limitation of remaining seated for 5 to 10 minutes maximum. The physician reported that the appellant cannot climb any stairs unaided as he always uses the handrail. The definition provided for "unaided" is without the assistance of an assistive device. The panel finds that a handrail does not meet the definition of an assistive device as set out in the section 2(1) of the EAPWDA of "a device designed to enable a person to perform a daily living activity that, because of a severe impairment, the person is unable to perform." The panel

acknowledges that the appellant's abilities differ between "good and bad days" and that the physician states he has "bad days" at least once per week. The panel finds that given the limitations as reported and with no further explanation of what effect a bad day has on the appellant, the ministry reasonably determined that there was not enough evidence to establish that the appellant's physical impairments were severe.

With respect to the reasonableness of the ministry's decision that there is not sufficient evidence to show that the appellant's impairment directly and significantly restricts his ability to perform his daily living activities, the panel finds that the ministry was reasonable to determine that the appellant's impairment does not in the opinion of a prescribed professional directly and significantly restrict his ability to perform daily living activities either continuously, or periodically for extended periods. The panel notes that there are some tasks of DLA's for which the physician indicated the appellant requires continuous assistance. The functions of food preparation, meal planning and cooking were noted as requiring continuous assistance and there was a note that the appellant relies on easy microwavable foods and that he doesn't plan anything out. The panel finds the ministry was reasonable to determine that there was insufficient evidence to either attribute this to his medical conditions or whether this is due to other circumstances such as personal preference given that the physician reported no limitations to lifting and no significant deficits indicated to cognitive and emotional function. Similarly, the appellant's need for continuous assistance with budgeting and paying rent is noted as being due to bankruptcy and there is no explanation of how his difficulty paying his bills is connected to his medical conditions. The other two activities that are noted as requiring continuous assistance are walking outdoors and standing. The panel finds that the ministry was reasonable to find that the DLA of moving about indoors and outdoors was not significantly restricted because it is noted in the report that his walking outdoors is affected on "bad days" about one day per week and that the physician notes in other areas of the report that the appellant is able to walk indoors independently but that it takes him longer than typical using chairs for support, which do not meet the legislative definition for assistive devices. The physician indicated that it takes the appellant significantly longer than typical with some tasks of DLA and some of these are twice as long, such as dressing, transfers, going to and from stores and getting in and out of a vehicle, the panel finds that the ministry reasonably determined that the delay is not significant since these tasks are still effectively performed by the appellant without assistance or the use of an assistive device.

With respect to the reasonableness of the ministry's decision that the appellant does not require the use of an assistive device or the significant help or supervision of another person to perform his daily living activities, the panel finds that as the ministry reasonably determined the appellant's daily living activities are not, in the opinion of a prescribed professional, directly and significantly restricted, the ministry was reasonable to conclude that it cannot be determined significant help is required from another person. The panel notes the physician indicated that the appellant requires a handrail to climb stairs and that he uses the car door and seat to get in and out of the car however the panel finds the ministry was reasonable to determine that these do not meet the definition of assistive devices.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.