

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) June 23, 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

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

1. Appellant's PWD application consisting of:

- A physician's report and an assessor's report both completed on February 4, 2014, with additional information added in about June 2014, by a doctor who indicated he has known the Appellant for 1 year and had seen the Appellant between 2-10 times in the year preceding the reports.

2. Appellant's request for reconsideration with written argument from the Appellant's advocate and a self-report completed by the Appellant.

At the hearing, the Appellant described his back pain as affecting him all day, every day. When he gets up he feels pain like sharp pins and needles pricking his feet. He wakes up because of similar pain in his arms. Sometimes the pain shoots down his spine to his feet. Because of the pain, the Appellant said that he lies down on a heating pad for most of the day. Also, if he does too much, such as walking too far or trying to lift laundry, he pays for it afterwards and has to lie down. The Appellant described his difficulties with getting in and out of a car, usually feeling stiff and sore. The Appellant provided information about the strong prescription pain medication he takes daily and which affects him so that he can't take any if he's going to drive. He described his pain as being in the range of 7-8 out of 10 throughout the day, but at times at 9 to over 10 after some activity.

The Appellant said he is not going for physiotherapy because he can't afford it. He said he has been a hardworking man all his life and it is very difficult for him not to be able to do things and to earn a living. He also does not like to complain about his pain, about how difficult it is for him to even bend to tie his boots, or do chores such as vacuuming around his home. The Appellant said that the doctor did not fill out the forms correctly and did not clearly lay out the extent of his disability.

The Panel admits the Appellant's testimony at the hearing, pursuant to section 22(4) of the Employment and Assistance Act, because it substantiates and is in support of evidence that was before the Ministry at reconsideration.

At the hearing, the Ministry reaffirmed the reconsideration decision.

The Panel has summarized the relevant evidence as follows.

Diagnoses

In the physician's report, the doctor diagnoses the Appellant with malunion fracture right humerus/atrophy; extensive lumbar spondylosis/disc disease' multiple right rib fractures – 4-5 and 7-9; diffuse osteopenia right upper limb.

Physical Impairment

The Appellant described his impairment as follows:

- His back is sore every day, all day and the pain wakes him up.
- It is getting harder every day to do things and to move around; if he is moving around or walking he gets sore and has to lie down on a heating pad.
- His boarder does most of the cooking as it is hard for him to stand too long in one place.

- His son lifts laundry baskets into the car for him; when he tries he gets pain afterwards and has to lie down.
- The pain is bad when he is vacuuming, so he gets his son to help.
- When he gets up, he has pain in his legs like pins and needles.
- If he overdoes things, he has to lie down for several days to recover.
- He realizes he must ask for help to do things even when he doesn't want to or he fears one day he will not be able to move at all; he takes strong prescription medication for the pain.
- There are times when he is unable to drive due to the pain.

In the physician's report the doctor described the severity of the Appellant's medical conditions and functional skills as follows:

- Chronic low back pain, degenerative discs and spondylosis, 2 degree arthritis, referring to an LS spine x-ray, which is attached to his report.
- Cannot handle chain saw, logging work in general or any heavy construction duties.
- Some preliminary right upper arm, right shoulder dystrophy prevents lifting efforts, elevation of the shoulder.
- No longer fit for manual work due to extensive lumbar disc disease, malunion right humerus and some disease atrophy.
- Can walk unaided 1-2 blocks, can climb more than 5 steps unaided with some effort, can climb 2-5 steps unaided easily without assistance, can lift 5-15 lbs., and can remain seated for less than one hour.

Mental Impairment

The doctor provided no diagnoses of any mental health conditions and indicated in the physician's report that the Appellant has no significant deficits with cognitive and emotional functioning. Also, in the assessor's report, the doctor wrote "no major deficits here" for cognitive and emotional functioning.

Daily Living Activities

The doctor reported, in the physician's report, that the Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. The doctor also provided the following information regarding restrictions to the Appellant's daily living activities:

- Continuous restrictions to basic housework, and periodic restrictions to daily shopping and mobility outside the home.
- No restrictions to personal self-care, meal preparation, management of medications, mobility inside the home and social functioning.
- Use of transportation and management of finances indicated as restricted but with no details.
- "Cannot handle uneven terrain or lift boxes, groceries heavier than 10 lbs."
- "Unable to perform previous duties" in previous type of work.
- "Restricted to light manual duties of self-care. Unable to maintain housework, outdoor home maintenance or lawn care. Needs family assistance for cleaning house due to back pain and impaired movements".

In the assessor's report, the doctor wrote that the Appellant cannot do heavy housework or cleaning, or home outdoor/garden maintenance. The doctor also provided the following information about the Appellant's functioning:

- Ability to communicate is good in areas of speaking, reading, writing and hearing.

- Independent walking indoors; takes significantly longer walking outdoors – “sore lower back subjectively”
- Needs periodic assistance with climbing more than 5 stair steps, with standing, with lifting and with carrying and holding, which take significantly longer and is restricted to 15 lbs. max.
- Independently manages all areas of personal care, meals, paying rent and bills and medications. Needs periodic assistance with laundry – “help needed for bending”; with basic housekeeping “needs assistance bending to floors, overhead lifting or lifting to waist over 15 lbs.”
- Independently manages areas of shopping, that is, going to and from stores, reading prices/labels, making appropriate choices, paying for purchases; and, is “restricted to small loads” for carrying purchases home.
- Independently uses transit schedules/arranging transportation; needs periodic assistance getting in/out of a vehicle and using public transit – soreness with lower back: and “needs frequent rest stops during driving, difficulty with sitting > [more than] 1 hour due to low back pain.”
- Independently manages all areas of social functioning; had marginal functioning with his immediate social network and good functioning with his extended social network.
- Added comments: “able to care for himself without assistance” and “subject to falls”

Help with Daily Living Activities

The Appellant stated that his boarder does most of the cooking. His son lifts the laundry baskets into the car and helps with vacuuming.

In the physician's report, the doctor wrote that the Appellant needs family assistance for cleaning house due to back pain and impaired movements. In the assessor's report the doctor provided the following information:

- Needs family assistance for home care/laundry, meal preparation and cleaning.
- May need cane for support, house needs handicapped aids in place, such as toileting aids and bath aids.
- No assistance provided by assistance animals.

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 Mental Impairment

The doctor provided no diagnoses of any mental health conditions and reported that the Appellant has no significant deficits with cognitive and emotional functioning. Therefore, the Panel finds that the Ministry reasonably determined that there was no severe mental impairment.

Severe Physical Impairment

The Appellant submitted that his chronic back pain affects his ability to function all day, every day. The pain impacts his ability to work, to walk, to bend, to do household chores and to drive.

In its reconsideration decision, the Ministry wrote that it reviewed the information from the Appellant and the doctor. Based on the doctor's assessments of the Appellant's functional skills, the Ministry found that the Appellant's limitations were of a moderate degree of impairment and 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.

The Appellant submitted that, because of his back pain, he has to lie down most of every day, especially after walking too far, bending or doing chores around his home. He can no longer work at his former job. Because of the pain and how it restricts his movements, he needs help from his boarder and his son. The doctor diagnosed the Appellant with several physical conditions, including malunion fracture right humerus/atrophy; extensive lumbar spondylosis/disc disease, multiple right rib fractures and diffuse osteopenia right upper limb. For restrictions to physical functioning, however, the doctor focused on impacts from the Appellant's back condition.

The doctor reported that the Appellant is able to walk unrestricted for 1-2 blocks, but also takes significantly longer to walk; needs periodic assistance with climbing more than 5 stairs; needs periodic assistance with standing and lifting; is restricted to lifting small loads; and, needs help with bending to floors, overhead lifting or lifting over 15 lbs. to the waist. The doctor added that the Appellant may need a cane for support and handicapped aids for his home. However, the doctor also reported that the Appellant independently manages physical aspects of personal care, shopping (restricted to small loads) and meal preparation, and that the Appellant is able to care for himself without assistance. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably concluded that the Appellant's limitations are in keeping with a moderate degree of physical impairment and not a severe physical impairment.

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.

Restrictions to Daily Living Activities

The Appellant submitted that after he does anything physical, he has to lie down for most of the day because of his back pain. He also relies on help from his boarder and his son with things like cooking, lifting and vacuuming.

The Ministry submitted that, because the doctor reported that the Appellant performs the majority of his daily living activities independently or with a little help for heavier lifting, the information from the prescribed professional did not establish that the Appellant's impairment significantly restricts 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 mental or physical impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. Daily living activities are defined in section 2(1) of the EAPWDR, and are listed in the physician's and assessor's reports.

The prescribed professional in this case, the Appellant's doctor, noted that for some activities, such as carrying and lifting, getting in/out of a vehicle, and bending to the floor, the Appellant needs periodic assistance. The doctor did not provide details about the frequency or extent of the help needed. He only wrote that the Appellant needs family assistance for home care, laundry, meal preparation and cleaning. This is consistent with the information provided by the Appellant. The doctor also reported that the Appellant independently manages all areas of personal care, shopping (except for carrying purchases home), meal preparation and social functioning. In addition, the doctor wrote that the Appellant is able to care for himself without assistance. Therefore, based on the information from the doctor, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant's impairment directly and significantly restricts his daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted that he relies on help from his boarder and his son for cooking, laundry and vacuuming. Also, his doctor has noted that he may need a cane and bathroom aides.

The Ministry noted that a cane may be required as well as aides for the bathroom. However, 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. Help in relation to a daily living activity is defined in section 3 of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

The doctor reported that the Appellant needs only periodic assistance with basic housekeeping and family help for laundry, meal preparation and cleaning. However, the doctor also wrote that the Appellant is able to care for himself without assistance. As for assistive devices, the doctor reported that the Appellant may need a cane for support and the house needs handicapped aids in place. Based on this evidence from the doctor and because the Ministry reasonably determined that the evidence does not establish that daily living activities are directly and significantly restricted either continuously or periodically for extended periods, the Panel finds that the Ministry reasonably concluded that the requirements in section 2(2)(b)(ii) of the EAPWDA were not met.

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.