

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) September 15, 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

The Appellant did not appear at the hearing. The Panel confirmed that notice was provided to the Appellant and then proceeded with the hearing in his absence, in accordance with section 86(b) of the Employment and Assistance Regulation.

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

1. Appellant's PWD application consisting of:

- Appellant's self-report dated May 14, 2014.
- A physician's report and an assessor's report, both completed on April 14, 2014, by a doctor who indicated he has known the Appellant for 11 years and had met the Appellant 11+ times in the past year.

2. Appellant's request for reconsideration dated September 8, 2014, together with:

- Laboratory requisition for hematology tests, dated September 5, 2014, by the same doctor.
- Prescription, dated September 5, 2014, by the same doctor for medications for the Appellant.
- Written submission prepared for the Appellant by another person. Because there is no explanation in the record regarding the source of the information in this submission, the Panel will consider this as additional descriptions from the Appellant about his conditions.

The Panel considered the statements in the Appellant's notice of appeal of September 18, 2014 as his submissions for this hearing. In that notice, his description of his impairments is consistent with and in support of evidence that the Ministry had at reconsideration. Therefore, the Panel admits that information in accordance with section 22(4) of the Employment and Assistance Act. At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

Diagnoses

In the physician's report, the doctor diagnosed the Appellant with COPD [chronic obstructive pulmonary disease] onset 2012, diabetes onset 2008 and anxiety onset 2013. The doctor also added the following to describe the severity of the Appellant's conditions: diabetic neuropathy, poor diabetes control and diabetic retinopathy; unable to perform detailed tasks; pain in peripheries; gastroparesis with intermittent nausea and vomiting.

Physical Impairment

In his self-report, the request for reconsideration and the notice of appeal, the Appellant described his disability as follows:

- COPD, diabetes, anxiety and sleep apnea; listing 7 medications.
- His feet get sore and it is hard to walk around in the morning because of diabetes.
- He cannot walk for long; his back hurts; walking up stairs, he gets short of breath.
- Has a very weak system; always tired and has insomnia.
- Feels like he has no energy; always aching.
- Physical functional skills are as follows: can walk 1-2 blocks unaided, lift 7-16kg., can remain seated for 1-2 hours.
- Cannot go to work because his diabetes is not in control.
- His wrist was broken; it hurts and has never been the same.
- Hard to move around and do daily activities; sometimes he cannot put clothes on himself; he cannot cook or work.

- Needs periodic assistance with regulating his diet, carrying purchases home.

In the physician's and assessor's reports, the doctor reported that the Appellant:

- Can walk 4+ blocks unaided; climb 5+ stairs unaided; has no limitations with remaining seated; his ability to lift is unknown; gets short of breath on stairs; stops for rest at 5 steps.
- Has symptoms of pain, neuropathy, intermittent gastrointestinal condition and needs to monitor glucose regularly.
- Can independently walk indoors and outdoors, climb stairs, stand, lift, and carry and hold.

Mental Impairment

In his reports, the Appellant described his disability as follows:

- Gets a lot of anxiety and does not feel like leaving his house; he cannot control it; feels restless; has no purpose to life.
- Ability to speak is satisfactory; ability to read, write and hear is poor.
- Has moderate impact to consciousness, attention/concentration, motor activity and language.
- Needs periodic support with interacting appropriately with others; has marginal functioning with his extended social network.

The doctor reported that the Appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention/sustained concentration. The doctor also indicated, in the assessor's report, that anxiety impacted the Appellant's ability to manage daily living activities, and reported the following impacts to areas of cognitive and emotional functioning:

- Major impact to motivation; moderate impact to emotion, impulse control, executive, and memory; and minimal impact to bodily functions, consciousness, insight and judgement, and attention/concentration.
- No impact to motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

Daily Living Activities

The doctor reported that the Appellant has been prescribed medication that interferes with his ability to perform daily living activities; that is, insulin which requires regular monitoring. In the assessor's report, the doctor indicated that the Appellant has satisfactory abilities in areas of reading, writing and hearing, and, good ability in speaking, and manages daily living activities as follows:

- Independently manages all areas of personal care, medications and transportation.
- Periodic assistance for basic housekeeping; for going to/from stores, making appropriate choices/paying for purchases; independently reads prices and labels/carries purchases home.
- Lives at home with parents, motivation low, some depression affects coping.
- Periodic assistance needed with meal planning and food preparation; continuous assistance needed with cooking; independently manages safe storage of food.
- Independently manages banking and budgeting; needs periodic assistance with paying bills.
- Independently manages all areas of social functioning, except needs periodic support/supervision with dealing appropriately with unexpected demands.
- Has good functioning with immediate and extended social networks.

Help with Daily Living Activities

The doctor noted that the Appellant does not require any prostheses or aids for his impairment, and does not have an assistance animal. The Appellant gets help from family for daily living activities.

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 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 the reasonableness of the Ministry's decision under the PWD criteria at issue in this appeal.

Severe Physical Impairment

The Appellant's position is that he has a physical impairment. He is limited in his ability to walk, climb stairs, use his wrist, and manage daily living activities. Also, he cannot work.

In its reconsideration decision, the Ministry wrote that it considered the Appellant's self-report and all of the information from the doctor. Based on that information, the Ministry determined that it did not have enough information to confirm that the Appellant has a severe physical impairment.

The Panel's Findings

The diagnosis of a serious medical condition does not in itself establish a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment restricts daily functioning. This includes evidence from the Appellant as well as from a prescribed professional, such as the doctor who completed the reports. Also, the ability to work and/or look for work is not one of the criteria for PWD designation in section 2(2) of the EAPWDA nor is it listed in the definition of daily living activities in section 2(1) of the EAPWDR.

The Appellant described several physical limitations, including his inability to walk for long, climb stairs without getting short of breath, and sometimes get dressed. His doctor diagnosed the Appellant with COPD and diabetes, and noted that the Appellant has pain in his peripheries and poor diabetes control. As for physical functioning, the doctor did report that the Appellant gets short of breath on stairs and rests after 5 steps. However, the doctor also noted that the Appellant can walk 4+ blocks unaided and can climb 5+ steps unaided. According to the doctor, the Appellant also independently manages all areas of mobility and physical activity, and personal care. Although the Appellant needs periodic assistance with activities such as basic housekeeping and some aspects of shopping, the doctor provided no details about the cause of those restrictions nor the extent of help needed. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that it did not have enough information to confirm that the Appellant has a severe physical impairment.

Mental Impairment

The Appellant's position is that his anxiety and lack of motivation severely impact his ability to function, especially his ability to go out and to work.

The Ministry determined that it did not have enough information to confirm that the Appellant has a severe mental impairment.

The Panel's Findings

The Appellant's description of his anxiety and lack of motivation is confirmed by his doctor's diagnoses of anxiety and reports of significant deficits with the Appellant's cognitive and emotional functioning. However, the doctor reported only one major impact to such functioning – to motivation, and 4 moderate impacts – to emotion, impulse control, executive and memory. For the 8 other areas, the doctor reported only minimal or no impacts. The Panel also notes that, except for notes that the Appellant cannot perform detailed tasks, that his motivation is low and depression affects his coping, the doctor provided no specifics about how the Appellant's mental impairments affect his ability to manage activities requiring cognitive abilities. In fact, the doctor reported that the Appellant independently manages most of them, including banking, budgeting, medications, transportation and all areas of social functioning, except for dealing appropriately with unexpected demands. The Appellant also has good functioning with both his immediate and extended social networks. Based on the information provided therefore, the Panel finds that the Ministry reasonably determined that it did not have enough evidence to confirm that the Appellant has a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that because of his severe mental and physical impairments his ability to manage his daily living activities and to work is restricted.

The Ministry wrote that it relies on the expert medical opinion and the assessments provided by the doctor. Based on that information from the doctor, the Ministry determined that there was not enough evidence to establish that the Appellant's impairments directly and significantly restrict his daily living activities continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion confirming 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 also listed in the physician's and assessor's reports. The prescribed professional in this case is the doctor who has known the Appellant for 11 years.

The doctor did report that the Appellant needs periodic assistance with some activities such as basic housekeeping, going to and from stores, meal planning and food preparation. However, the doctor provided no details about the type of help needed, for how long it was needed, or whether help is needed because of the Appellant's mental or physical impairments. This lack of detail also applies to the doctor's report that the Appellant needs continuous assistance with cooking. Additionally, the doctor reported that the Appellant independently manages the majority of his daily living activities, including all areas of personal care, of medications, transportation, some areas of shopping and meals, and most areas of social functioning. Therefore, the Panel finds, that based on the doctor's assessments, the Ministry reasonably determined that was not enough evidence to establish that the Appellant's impairments directly and significantly restrict his daily living activities continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant's position is that he needs his family's help with 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 the Appellant requires significant help from other persons. Also, it noted that the information from the doctor did not establish that the Appellant requires any assistive devices, the significant help of another person or an assistance animal.

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 doctor reported only that the Appellant gets help from family, but provided no details about such help. The doctor also reported that the Appellant needs no assistive devices or an assistance animal. Therefore, based on the evidence from the doctor, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant requires help with his daily living activities.

Conclusion

Having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.