

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 29, 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 physician's report completed by the appellant's physician dated February 13, 2014. The physician's report diagnoses the appellant with post brain meningioma excision with an onset date of November 2008 and that his prognosis is incurable. In the health history, the physician indicates that as a result of brain surgery the appellant ended up with poor balance, occasional falls, dizzy spells, difficulties with concentration, and short term memory problems. The physician indicates by checking a box the appellant has significant deficits relating to consciousness, executive functioning, memory, emotional disturbance, motivation, and attention however, the physician provides no further comment or explanation of how these deficits affect the appellant. 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 he can walk 4+ blocks unaided, climb 5+ stairs unaided, is limited to lifting 2kg or less, and he has no limitation in the length of time he can remain seated. The physician has had the appellant as a patient for 16 years and has seen him 2-10 times in the past 12 months.
- An assessor's report completed by the appellant's physician dated February 13, 2014. The report states that the appellant lives with his wife, that he has impaired cognitive functions, poor balance, has poor hearing, uses a cane to walk, climb stairs, stand, lift, and carry items. In the category of cognitive and emotional impairment the physician indicated by checking boxes that the appellant has a moderate impact in consciousness, emotion, attention/concentration, executive, memory, and motivation however the physician provides no further comment or explanation of how these deficits affect the appellant. The appellant is independent in all areas of personal care, basic housekeeping, shopping, paying bills/rent, medications, and transportation. The physician indicates the appellant uses an assistive device for meals but writes that this is because his "wife does it." The physician doesn't explain if his wife prepares the meals because the appellant cannot or if it is due to their domestic arrangement. The physician writes the appellant is independent in most aspects of social functioning, he receives help from his wife in dealing with unexpected demands, has good functioning in relationships within his immediate social network, as well as his extended social network. The assessor's report states the appellant receives assistance from his wife for his DLA's and that he uses a cane and crutches as assistive devices but he does not use an assistance animal. The assessor relied on an office interview with the appellant and his file/chart to complete his report.
- An application for Persons With Disability Designation completed by the appellant dated February 3, 2014. The appellant writes since his brain surgery in 2008 he has problems with basic balance, walking, thinking and concentrating, he gets dizzy spells, occasionally has difficulty walking straight, has fallen many times in his apartment, and is unable to work in his profession as a trades person. He adds that he relies on his wife for his care and suffers from depression and frustration due to his condition.
- An undated letter completed by the appellant. The appellant writes that he is unable to work because of his medical condition; he gets dizzy, has problems with his balance, he cannot stand or work for long, has pressure problems in his legs, has swollen legs, difficulty concentrating, has difficulty lifting and walking, and the therapies prescribed by his physician have not helped. He adds that his inability to work is not due to lack of trying but rather, he just cannot put in a days work and because of this he suffers from depression.

- A Request for Reconsideration application completed by the appellant dated April 19, 2014. The appellant writes in his reason for request for reconsideration that because of his medical conditions he is unable to work, he has developed depression, and that his doctor has confirmed his inability to work.

In the appellant's written submissions to the appeal panel dated September 23, 2014, he writes that he is incapable of part-time or full-time employment. He writes that after his brain surgery he was paralyzed on his left side and has developed DVT (deep vein thrombosis). He adds that in his profession he must have a good balance and work on ladders but he cannot do that anymore. He writes that he relies on his wife to make decisions for him, he gets easily confused, he cannot be left alone for long periods, and his doctor has diagnosed his condition as life-long.

The panel determined the additional documentary evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the evidence before the minister at reconsideration and provides corroborating information about the appellant's condition.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant's impairment is not severe, in the opinion of a prescribed professional 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, 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, in particular he relies on his wife to make decisions, and the use of an assistive device, a cane. He argues that because of his impairment he cannot work in his trade or engage in full time employment and that he cannot function normally, even at home.

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, 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.

The appellant argues that due to his medical condition he is unable to maintain employment. The panel notes that the legislation for a person's qualification as PWD designation, shown above, does not include an employability criteria. The PWD application is not meant to assess the person's employability.

### **Severe Physical Impairment**

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's physician.

The appellant's family physician of 16 years writes in the Physician's Report that in terms on his physical impairments, the appellant's suffers from dizzy spells due to a brain surgery he had in 2008. His physical limitations include lifting items in excess of 2kg and requiring a cane to walk, climb stairs, lift and carry items, and stand. However, the physician also indicates the appellant walks 4+ blocks unaided, climbs 5+ stairs unaided, and is independent in all areas of his DLA's with the exception of meals. The physician does not describe why he cannot prepare meals except to write that his wife does the work. The panel finds that given the limitations as reported and with no further explanation of why the appellant is unable to prepare his meals, the ministry reasonably determined that there was not enough evidence to establish that the appellant's physical impairments were severe.

### **Severe Mental Impairment**

The appellant's family physician indicates in the Assessor's Report that in the category of cognitive and emotional impairment the physician indicated by checking boxes that there is a moderate impact in consciousness, emotion, attention/concentration, executive, memory, and motivation. The physician indicates no impact in bodily functions, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems, and any other mental or emotional problems. There were no cognitive or emotional functions that were noted as being majorly impacted by his condition. The panel notes the physician has not detailed any DLA's that are affected by these moderate impairments. Given the absence of any major affect indicated by the physician, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

The appellant reports that he suffers from depression however the physician has not diagnosed him with depression nor has he included depression in the appellant's health history. The legislation requires that a mental or physical impairment must be in the opinion of a medical practitioner and therefore the ministry could not reasonably consider the condition of depression.

### **Restrictions in the ability to perform DLA**

As noted above, the physician states the appellant is independent in all areas of personal care, basic housekeeping, shopping, and paying bills/rent, medications, and transportation. The physician indicates the appellant uses an assistive device for meals but writes that this is because his "wife does it." The panel notes the physician doesn't explain if his wife prepares the meals because the appellant cannot or if it is due to their domestic arrangement; since the other boxes where the physician could have mentioned that the appellant needed assistance to prepare meals are not checked nor the box where the physician could have indicated it takes the appellant longer to prepare meals and considering the appellant's wife is certainly not an "assistive device", the panel finds the ministry reasonably determined it could mean a domestic arrangement. Although in the Physician's Report the physician indicates the appellant can lift no more than 2kg, this limitation has not affected any of his DLA's. The physician has provided neither explanation of the nature of this restriction nor any limitations it causes.

The panel finds that the ministry reasonably determined that the appellant performs the majority of his DLA independently and the assistance required is for lifting heavier weights. Overall, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairment significantly restricts his ability to manage his DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the EAPWDA.

### **Help to perform DLA**

The evidence of the physician, as a prescribed professional, is that the help required with DLA is provided the appellant's wife and that use of a cane and crutches as assistive devices are required routinely to help compensate for his impairment. The physician notes that the appellant is independent in all areas of mobility and he provided no additional explanation of the impact or importance of the cane, nor is there any other evidence by the physician or the appellant that he is using crutches. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be

determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

**Conclusion**

Having reviewed and considered all of the evidence and 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, and therefore confirms the decision.