

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 10, 2014 which found that the appellant did not meet three of the five 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 evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

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*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated May 23, 2014, a physician report (PR) and an assessor report (AR) both dated May 29, 2014 and completed by a general practitioner who has known the appellant since September 2013. The evidence also included the Request for Reconsideration dated September 26, 2014 with an attached handwritten note by the appellant dated September 27, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with arthritis (10 years) and HTN [hypertension] for 5 years. There is no diagnosis of a mental health condition.

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has “sore joints with reduced mobility.”
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided and can climb 5 or more stairs unaided, can lift 2 to 7 kg (5 to 15 lbs.) and has no limitation with remaining seated.
- The appellant is not restricted with mobility inside the home or mobility outside the home.
- The appellant experiences pain due to arthritis which reduces his mobility.

In the AR the general practitioner indicated that:

- The appellant is assessed as independent with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding, with no comments added by the general practitioner.
- The appellant has poor mobility, with arthritis pain in his hip and knee joints.

In the appellant's self-report, he wrote that:

- He has painful arthritis and a lot of problems that go along with it. He had two operations to put plates and screws in his ankle.
- His right wrist is fused. There were five difficult surgeries to complete this and eventually he had no movement [in his wrist].
- He has trouble walking. He can only walk 1 block and has to stop and rest.
- He has trouble sitting and sleeping.

In the his Request for Reconsideration submission, the appellant wrote that:

- He can only walk with a cane or a walker. He needs a cane just to get around short distances and a walker to go any long distances. He is older and has really bad arthritis and does not have the mobility.
- He has a hard time to stand for more than a few minutes.
- His arthritis is very painful and he feels he has a permanent disability and can no longer work in the future.

Mental Impairment

In the PR, the general practitioner reported:

- The appellant has no difficulty with communication and no significant deficits with cognitive and emotional function, with no comments provided.

In the AR, the general practitioner indicated that:

- The appellant has a good ability to communicate in all areas.
- The section of the report describing impacts to cognitive and emotional functioning is not completed as not applying to the appellant.
- The appellant is independent in all aspects of social functioning, with good functioning in both his immediate and extended social networks.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his daily living activities.
- The appellant is not restricted in any of the listed DLA, including social functioning.

In the AR, the general practitioner reported that:

- The appellant is independent in all tasks of all listed DLA, namely: moving about indoors and outdoors, personal care, basic housekeeping, shopping, preparing his own meals, managing his personal finances [pay rent and bills] and medications, using transportation facilities and social functioning.

In his self-report, the appellant wrote that:

- He has problems getting food and bathing.

Need for Help

The general practitioner indicated in the AR that the appellant lives alone and, with respect to the assistance provided by other people, the appellant's friends provide him with this help. The section of the report setting out the assistance provided through the use of assistive devices has been marked "NA", or not applicable to the appellant. In the PR, the general practitioner also indicated that the appellant does not require an aid for his impairment.

In his Notice of Appeal dated October 10, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision, and wrote that he believes he is disabled as he can only walk short distances with a cane or walker. He has no chance of getting work although he has gone on many job interviews. He cannot lift 50 lbs. and he cannot stand all day without the assistance of a cane.

The ministry relied on its reconsideration decision for its submission.

Admissibility of Additional Information

The appellant's Notice of Appeal includes information that is consistent with, and tends to corroborate, information that was before the ministry regarding the impacts the appellant is experiencing as a result of his health conditions. The panel has admitted this information as written testimony in support, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment based on the information provided and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(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.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of the pain and restricted mobility he experiences due to arthritis. The appellant wrote that he has painful arthritis and a lot of problems that go along with it, including that he can only walk with a cane or a walker. He needs a cane just to get around short distances and a walker to go any long distances, and he has a hard time standing for more than a few minutes. He also has trouble sitting and sleeping. The appellant wrote that he has no movement in his right wrist as it has been fused. The appellant argued that, due to his physical limitations, he can no longer work.

The ministry's position is that the information provided by the general practitioner indicated that the appellant has a few physical limitations and there is not enough information from the medical professional to confirm that the appellant has a severe physical impairment. The ministry wrote in the reconsideration decision that the general practitioner reported that the appellant is able to walk up to 1 to 2 blocks unaided and can climb 5 or more steps unaided, that he can lift between 5 to 15 lbs. and has no limitation with remaining seated. The general practitioner reported that the appellant is independent in all aspects of mobility and physical ability and he does not require an aid for his impairment. The ministry argued that employability is not an eligibility criterion for designation as a PWD and the application is not intended to assess employability or vocational abilities.

Panel Decision

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, the ministry 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 general practitioner.

The general practitioner, who had known the appellant since September 2013, diagnosed the appellant with hypertension and with arthritis that causes sore joints, with pain in his hip and knees, and reduced mobility. Although the appellant wrote that he can only walk with a cane or a walker and he needs a cane to go short distances and a walker to go any long distances, the general practitioner indicated that the appellant does not require an aid for his impairment. The general practitioner reported in the PR that the appellant can walk 1 to 2 blocks unaided and, in the AR, the appellant is

assessed as independent with walking indoors and outdoors and with no indication of the use of an assistive device. The general practitioner also indicated in the PR that the appellant can climb 5 or more stairs unaided, he can lift 5 to 15 lbs. and has no limitation with remaining seated. In the AR the general practitioner indicated that the appellant is independent with climbing stairs, standing, lifting and carrying and holding. The appellant, on the other hand, wrote that he has a hard time sitting and standing for more than a few minutes.

The appellant argued that, due to his physical limitations, he can no longer work. The panel notes that one's ability to participate in paid employment is not a statutory criterion for designation as a PWD. The focus of the legislation is whether a severe impairment significantly restricts a person from managing his DLA independently. This differentiates the disability assistance regime from consideration under the legislation for status as a Person with Persistent Multiple Barriers (PPMB) or the Canada Pension Plan disability pension under federal legislation, where restrictions to the ability to work and employability are key considerations.

The panel finds that the evidence demonstrates that while the appellant experiences some limitations to his mobility, he remains independent with his mobility and physical abilities. The appellant's description of restrictions in these areas has not been identified nor described by his general practitioner. In the absence of further detail from the medical practitioner regarding the extent of restrictions to the appellant's functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant did not maintain a position that he has a severe mental impairment.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry stated that the general practitioner reported that the appellant does not have any difficulties with communication and no deficits to cognitive and emotional functioning.

Panel Decision

In the PR, the general practitioner did not diagnose a mental health condition and reported that the appellant has no significant deficits with cognitive and emotional function and no difficulty with communication. The sections of the report describing impacts to cognitive and emotional is indicated to be not applicable to the appellant and the appellant is assessed as independent with all aspects of social functioning. Given the absence of a mental health diagnosis and no reported impacts to the appellant's mental or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person or the use of an assistive device. The appellant wrote in his Request for Reconsideration that he needs a cane just to get around short distances and a walker to go any long distances and that he has problems getting food and bathing.

The ministry's position is that there is not sufficient evidence from the prescribed professional to

establish that the appellant's impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods of time. The ministry stated that the general practitioner indicated that the appellant's impairment does not restrict him in his DLA and that he is independent in all aspects of his DLA, including social functioning.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner, who has known the appellant since September 2013, is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner indicated in the PR that the appellant has not been prescribed medications that interfere with his DLA and that he is not restricted in his ability to perform any of the listed DLA. Although the appellant reported that he requires a cane to walk short distances and that he has problems getting food and bathing, the general practitioner reiterated in the AR that the appellant is independent with walking indoors and walking outdoors and that the appellant is independent in all tasks of all DLA, including shopping and personal care. Given the absence of restrictions to DLA reported by the general practitioner, 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 appellant's position is that his physical impairment directly and significantly restricts his daily living functions to a severe enough extent that assistance is required, including the use of a cane or walker as assistive devices.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The general practitioner indicated in the AR that the appellant lives alone and, with respect to the assistance provided by other people, the assistance is provided by the appellant's friends. The section of the AR indicating assistance provided through the use of assistive devices is marked by the general practitioner as not applicable to the appellant. 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.