

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) September 23, 2014 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the statutory requirements for designation as a person with disabilities (PWD) under Section 2 of the *Employment and Assistance for Persons with Disabilities Act*. 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;
- in the opinion of a prescribed professional, the Appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods by a severe impairment; and,
- in the opinion of a prescribed professional, 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 daily living activities.

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 the Appellant was provided with notice of the hearing and then proceeded with the hearing 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 February 14, 2014 PWD application consisting of:

- His self-report dated February 14, 2014.
- A physician's report completed on February 14, 2014 by a doctor (hereafter "Dr. A."), who indicated he was acting as a locum for the Appellant's family doctor. This doctor did not indicate how often he had seen the Appellant or how long he had known him.
- An assessor's report completed on May 5, 2014 by a doctor (hereafter "Dr. B"), who indicated that she has known the Appellant for 8 years at a clinic and had seen him between 2-10 times in the last year.

2. Appellant's request for reconsideration dated September 11, 2014, in which the Appellant wrote that he did not think that the doctor's report was read properly.

In his notice of appeal the Appellant wrote that the Ministry made decisions about his mobility due to living distances; that is, only 200 feet to a bus stop and only 1 stop to a store. If he can manage one way he needs a ride to return. On most days he cannot even manage a one way trip. This has been going on for 20 years and is getting worse daily. He stated that he has serious mobility issues.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Panel has summarized the relevant evidence in this appeal as follows.

Diagnoses

In the physician's report, Dr. A diagnosed the Appellant with bilateral severe osteoarthritis in both knees onset 1990. The knees need replacing. Dr. B described the same conditions in her report. Neither doctor diagnoses any mental health conditions.

Physical Impairment

The Appellant described his disabilities as follows:

- Severe knee problems; waiting for double knee replacement surgeries.
- Can only walk with a cane for perhaps an hour on a good day.
- Usually not able to leave the house without a ride or assistance; can't use public transportation; bus stop is too far – 2 blocks even with a cane and then will be in bed for 2 days in pain.
- Unable to work at all; difficulty doing home chores and some can't be done at all.
- Affects every waking moment and movement; some days wakes up with a locked knee; unable to walk at all for hours; usually crawls on stairs to get up them.
- Groceries, shopping, etc. very painful.

Dr. A described the Appellant's physical functioning as follows:

- Very difficult walking; no prolonged standing or sitting, awaiting knee replacements.
- Can walk less than 1 block unaided; can climb 2-5 stairs unaided; can lift 5-15 lbs., can remain

seated for 1-2 hours.

- Limited movement; constant pain; certainly cannot work.

Dr. B described the Appellant's physical functioning as follows:

- Cannot walk, stand, climb stairs easily due to pain, stiffness in both knees.
- Uses assistive devices for walking indoors and outdoors, and for standing.
- Takes significantly longer climbing stairs – needs to go on bum.
- Independently lifts, and carry and holds – not more than 20 lbs.
- Limited mobility.

Mental Impairment

Dr. A. reported that the Appellant has no significant deficits with cognitive and emotional functioning and no difficulties with communication. Dr. B wrote "N/A" [not applicable] in the cognitive and emotional functioning section of the assessor's report and also crossed through the checklist. She also reported that the Appellant's ability to communicate in all areas is good.

Daily Living Activities

Dr. A indicated that the Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. Dr. A also reported that the Appellant's:

- Personal self care, meal preparation, basic housework, daily shopping, mobility inside & outside the home, and use of transportation are continuously restricted.
- Management of medications and management of finances are not restricted.
- Social functioning is periodically restricted – isolating, very hard to get out.

Dr. B reported that the Appellant:

- Independently manages all areas of personal self care, paying rent and bills, medications and social functioning; and has good functioning in his immediate and extended social networks.
- Takes significantly longer with basic housekeeping.
- For shopping, needs continuous assistance with going to/from stores and carrying purchases home – needs a drive to stores and help with caring purchases home; independently manages reading prices/labels, making appropriate choices, paying for purchases.
- For meals, independently manages meal planning and safe storage of food; takes significantly longer with food preparation and cooking – difficulty standing preparing meals.
- For transportation, independently uses transit schedules/arranges transportation; uses assistive device for getting in/out of a vehicle; takes significantly longer using public transit – difficulty walking to bus stop, needs driver to get to and from appointments, stores, etc.
- Difficulty with independent daily living activities.

Help with Daily Living Activities

Dr. A. reported that the Appellant uses canes, crutches and railings at home. People assist with cooking, cleaning and transportation.

Dr. B reported that the Appellant uses a cane and railings when available to get up/down stairs. He needs a cane for daily living activities. Also, he could access community service if needed, though there is limited availability in the community. The Appellant does not have an assistance animal.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, concluding that the Appellant was not eligible for PWD designation because he did not meet all the requirements in section 2(2) of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the Appellant's circumstances. Specifically, the Ministry determined that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods and as a result of those restrictions he requires help to perform those activities.

Applicable Legislation

The following sections of the EAPWDA apply to this appeal:

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.

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 serious mobility issues from severe osteoarthritis in both

knees and constant pain. He can only walk with a cane for perhaps an hour on a good day and he is usually not able to leave the house without assistance. Doing household chores, grocery shopping and other tasks is very painful and some things do not get done. He can no longer work.

In its reconsideration decision, the Ministry wrote that the information from the Appellant and the doctors indicated a moderate degree of physical limitation, but not evidence of 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 prescribed professionals, such as the doctors who completed the reports. Also, the ability to work and/or look for work is not a criterion for PWD eligibility in section 2(2) of the EAPWDA nor is it listed among the daily living activities in section 2 of the EAPWDR.

The Appellant described how he needs to use a cane but can only walk for about an hour on a good day and sometimes he spends two days in bed afterwards. He also described how the pain restricts his ability to do household chores and grocery shopping. Both doctors described the Appellant's condition as bilateral severe osteoarthritis in both knees. Both doctors also described the restrictions the Appellant experiences with his mobility; that is, with walking, standing and climbing stairs. Dr. A reported that the Appellant can walk less than 1 block unaided, can climb 2-5 stairs unaided, finds it very difficult to walk and cannot stand or sit for prolonged periods. Dr. A also wrote that the Appellant experiences constant pain, and needs a cane, crutches and uses railings. Dr. B noted that the Appellant uses assistive devices for walking indoors and outdoors, and for standing. The Appellant also takes significantly longer when climbing stairs.

The doctors, however, differ in their assessment of how the Appellant's physical impairment restricts certain daily living activities which would be impacted by the Appellant's physical impairment. Dr. A indicated that personal self care, meal preparation, basic housekeeping, daily shopping, mobility inside and outside the home and use of transportation are all continuously restricted. He noted that the Appellant needs canes and railings, and people to assist with cooking, cleaning and transportation. Dr. B noted that for mobility and physical ability the Appellant uses an assistive device for walking indoors and outdoors and for standing, and takes significantly longer climbing stairs. However, she reported that continuous assistance is needed only for going to and from stores and carrying purchases home. As for basic housekeeping tasks, food preparation and cooking, and using transportation she reported that the Appellant takes significantly longer because of difficulty standing and walking.

Dr. A did not indicate how long he had known the Appellant, how often he had seen the Appellant or if in fact the date of the physician's report was the only contact with the Appellant. Dr. B, on the other hand, indicated she has known the Appellant for 8 years, had seen him 2-10 times in the last year and provided a more recent assessment than Dr. A. The Panel, therefore, gives more weight to Dr. B's reports. The Panel also acknowledges that the Appellant clearly has serious mobility restrictions and that he needs assistive devices and help from friends to get around. However, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information indicates a moderate degree of physical limitations, but not evidence of a severe physical impairment.

Severe Mental Impairment

The Panel finds that there is no diagnosis of any mental health condition and neither doctor reported any significant deficits to cognitive and emotional functioning. Therefore, the Ministry reasonably determined that there is no mental health condition or mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that his physical impairment significantly restricts his mobility and his ability to do household chores, and activities such as shopping and taking a bus. He also needs to use a cane and needs friends to help him.

In its reconsideration decision, the Ministry wrote that there were significant discrepancies in the information between the two doctors, and some of the information from the Appellant. The Ministry determined that the information from the Appellant's prescribed professionals does not establish that his 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 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 professionals in this case are the doctors who completed these two reports.

The information from Dr. A and Dr. B is not consistent regarding restrictions to daily living activities, except that both doctors wrote that the Appellant needs to use a cane and needs help from friends. For the reasons explained above, the Panel gives more weight to Dr. B's report with respect to the amount of assistance the Appellant needs. Dr. B wrote that the Appellant has difficulty with independent daily living activities. However, she also reported that all areas of personal care, paying rent and bills, medications and social functioning, and some shopping tasks are managed independently by the Appellant. Basic housekeeping tasks, food preparation and cooking, and using public transit take significantly longer because the Appellant has difficulty standing and walking. Dr. B reported that the Appellant needs continuous assistance only for going to and from stores, and for carrying purchases home. Therefore, based primarily on the opinion of Dr. B, the Panel finds that the Ministry reasonably determined that the evidence does 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's position is that he needs and uses assistive devices, especially a cane. He also needs help from friends to take him places and carry things.

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 indicated that the information from the doctors 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, both doctors did report that the Appellant needs and uses an assistive device, which is consistent with the Appellant's evidence that he can only walk with a cane. Dr. A wrote that the Appellant needs a cane and crutches. Dr. B wrote that the Appellant uses a cane for daily living activities, but she did not identify which activities or how often the Appellant uses a cane, even for those activities which take the Appellant significantly longer to do. According to the doctors, the Appellant also needs and gets help from friends to go to and from places, and to carry things. Both doctors also indicated that the Appellant needs and uses railings; however, the Panel notes that stair railings are not assistive devices within the definition of section 2(1) of the EAPWDA. Therefore, although, the doctors reported that the Appellant uses a cane for mobility and has help getting to and from places, the Panel finds that based on the doctors' reports and based on the determination that the Appellant's daily living activities are not directly and significantly restricted, the Ministry reasonably concluded that the evidence does not establish that the Appellant satisfied the requirements in section 2(2)(b)(ii) of the EAPWDA.

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.