

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) October 21, 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

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

1. Appellant's PWD application consisting of:
 - His self-report dated January 24, 2014.
 - A physician's report and an assessor's report both completed on March 31, 2014 by the same doctor who indicated that the Appellant has been his patient for 20 years and he has seen the Appellant 11 or more times in the past year.
2. Appellant's October 5, 2014 request for reconsideration together with:
 - Written argument from his advocate dated September 23, 2014.
 - Appellant's statement dated September 18, 2014.
 - A statement signed by the same doctor on October 3, 2014.

Diagnoses

In the physician's report, the doctor diagnosed the Appellant with Hepatitis C (onset January 2005), liver transplant (2007), sleep disorder (onset 2012), chronic back pain (onset 2007) and chronic abdominal pain (onset 2005). The doctor diagnosed no mental health conditions.

Physical Impairments

In his PWD application, the Appellant described his disability as follows:

- Hepatitis C, arthritis, liver transplant (2007), sleep disorder, daily fatigue, nausea, pain in abdomen, aches (pain in hands, wrists, arms, ankle and knee), deteriorating liver.
- These disabling conditions are severe and make it difficult for him to do the following daily activities: standing in the shower and reaching up/down to wash; standing in the kitchen to make meals and move things around (food, pots, pans); trying to clean the kitchen, vacuum, do his laundry; having the motivation to keep his house clean because of the pain it causes; taking the right medications at the right times; remembering to eat regular and healthy foods; having trouble getting and carrying groceries; entering/exiting a vehicle or sitting for more than a couple of minutes to operate it; going up/down stairs or contending with any kind of slope; bending to pick things off the floor.

In his reconsideration statement, the Appellant described his physical impairments as follows:

- Hepatitis C, liver transplant, sleep disorder, chronic back pain and chronic abdominal pain.
- Daily living activities are restricted to the point that he requires significant assistance from others or takes considerably longer than normal to perform.
- Limited to walking 1-2 blocks, but only under ideal circumstances on flat, level ground.
- Walking any distance outdoors takes him at least 3 times longer than normal; must stop frequently to rest to relieve increasing pain and fatigue.
- Could climb between 5 + stairs – but needs a handrail, needs to stop and rest before going on.
- All basic mobility tasks take him at least 3 times longer than normal.
- Arm strength might allow him to lift within 7-16 kg., but he is restricted to lifting and carrying less than 2kg (5lbs); generally avoids lifting altogether; limitations due to severe back and abdominal pain along with fatigue from flu-like symptoms associated with hepatitis C.
- Sitting 1 to 2 hours causes his back and abdomen to get very sore and he has to lie down to relieve the pain.
- Dressing and bathing takes at least 3 times longer than normal circumstances; due to severe pain in his abdomen is unable to sit in a bathtub, so only stands in the shower, which takes 3

times longer than normal; worries about falling when stepping in and out.

- Requires periodic assistance to pull him up from sitting in a low chair; every morning struggles out of bed in pain – takes him a least 3 times longer than normal.
- Symptoms prevent him from performing basic housekeeping, laundry, meal planning, cooking regular healthy meals, going out shopping for groceries and other necessary personal needs.

In the physician's and assessor's report, the doctor described the Appellant's physical health conditions and impairments as follows:

- Has severe back pain – on narcotics; difficulty bending and lifting.
- Has persistent abnormal LFT [liver function test]; may need new liver biopsy
- Insomnia - has difficulty sleeping so gets tired the next day.
- Will continue to have chronic abdominal pain and back pain (severe).
- On strong analgesics (narcotics) daily.
- Physical functioning skills: can walk 1 to 2 blocks unaided on a flat surface; can climb 5+ stairs unaided; can lift 15-35 lbs and has no limitations remaining seated.
- Chronic abdominal and back pain (severe).

Mental Impairments

In his PWD and reconsideration reports the Appellant described his conditions as follows:

- Depression has a major impact on his daily functioning; deals with depression and lack of motivation, anxiety and frustration because of deteriorating blood work.
- Experiencing a lot of anxiety, agitation, stress and depression.
- Not socializing or interacting with friends or family because of constant pain and anxiety; is socially isolated and stays mostly at home; incapable of interacting appropriately with others.
- Has difficulty motivating himself to get through each day; has difficulty making decisions and planning ahead; difficulty doing most important thing first and finishing tasks.
- Feels constantly exhausted from interrupted sleep and is stressed from worry about having to cope with continued daily pain.
- Sometimes has difficulty explaining how bad he feels.

In the physician and assessor's reports the doctor reported the Appellant's mental health conditions and impairments as follows:

- Has a significant deficit with cognitive and emotional functioning in the area of motivation (loss of initiative or interest) – "Doesn't feel like doing anything. Gets tired".
- Major impact in area of motivation; minimal to moderate impact in emotion.
- No impacts to bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems, or other emotional or mental problems.
- "Depression at times & anxiety"; "Poor sleep. Feels very tired the next day".
- Ability to communicate in all areas is good (speaking, reading, writing, hearing).

Daily Living Activities

In the physician's report, the doctor indicated that the Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities. In the assessor's report, the doctor reported that the Appellant:

- Independently manages walking indoors, climbing stairs, standing, lifting, and carrying and holding.

- Independently manages walking outdoors – takes significantly longer, 1-2 blocks maximum.
- All mobility tasks take 3 times longer than normal. Must stop and rest frequently when walking.
- Independently manages all areas of personal care, shopping, paying rent and bills, medications, getting in/out of a vehicle.
- Independently manages all areas of social functioning; has good functioning with immediate social network and marginal functioning with extended social network – stays mostly at home.
- Indicated “N/A” [not applicable] for basic housekeeping and for meals – mother does all the cooking and planning; “N/A” for using transit/transit schedules and arranging transportation.
- Lives with his mother; she does all the cooking and housekeeping

Help with Daily Living Activities

The doctor indicated that the Appellant does not need any prostheses or aids for his impairment and does not have an assistance animal. The doctor wrote that the Appellant lives with his mother; she does all the cooking, planning and housekeeping.

In his PWD application and reconsideration statement, the Appellant described the help he gets as follows:

- Needs weekly assistance lifting heavy loads of laundry to the washing machine, vacuuming, washing floors and doing any daily household tasks that require bending, lifting or is remotely physical.
- Has no motivation for meal planning and cooking; has difficulty standing longer than 10 minutes so would benefit from assistance at least 3 times a week cooking healthy meals and cleaning up afterwards; cannot stand long enough to perform these tasks.
- Without his mother’s presence he would have even greater difficulty with his daily functioning; fortunate to have his mother to monitor his emotional well-being and help him cope with unexpected demands.

At the hearing, the Appellant said he has known the doctor who completed the reports for perhaps 20 to 30 years. He was not present when the doctor completed the PWD application, but he was with the doctor, reviewing the September 8, 2014 statement, when the doctor signed the October 4, 2014 statement. The Appellant also described the same health conditions and impairments as in his PWD application and reconsideration statement. For example, he said that he has to roll out of low chairs to get up or use the arms of an upright chair. The Appellant said he lives in a suite downstairs from his mother. She is elderly, but cooks for him and helps him when she can.

The Appellant’s advocate submitted arguments on the Appellant’s behalf. Those are summarized in Part F of this decision.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the Appellant’s hearing testimony as being consistent with and therefore in support of the evidence the Ministry had at reconsideration.

The Ministry reaffirmed its reconsideration decision.

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 enactments in the Appellant's circumstances.

Applicable Legislation

The 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.

Evidentiary Finding

The Appellant's advocate submitted that the statement signed by the doctor on October 4, 2014 was an endorsement of the information in the Appellant's September 18, 2014 statement and therefore should be considered as an additional medical opinion. The advocate said he prepared the September 2014 and October 2014 statements.

The statement signed by the doctor states: "I agree that the foregoing statement is an accurate assessment of my patient's overall physical and mental health condition and his current circumstances. After reviewing this information, I can confirm that [the Appellant's] disability conditions will continue to persist, and are severe enough to restrict his daily living activities to the point where he requires significant assistance and supervision from other people, or takes him considerably longer than normal to perform."

The Panel notes that the physician's and assessor's portions of the PWD application provided the doctor with the opportunity to identify specific health conditions and to make specific assessments of the impacts of those conditions on the Appellant's functioning abilities and daily living activities. Those reports are also designed so that the doctor can add comments, as in fact he did.

In contrast, the statement signed on October 4, 2014 is just that, a prepared statement without any additional explanations from the doctor who has been the Appellant's doctor for more than 20 years. The doctor did not indicate whether he completed another assessment of the Appellant's conditions and abilities in October 2014 and he did not explain why there are some differences between the Appellant's September 2014 statement and the March 2014 reports. Moreover, the information in the September 2014 statement about the Appellant's situation was not prepared by the doctor. For these reasons, the Panel gives little weight to the October 4, 2014 statement as an opinion by that doctor, but does consider the information in the September 18, 2014 statement as an additional self-report from the Appellant.

The Panel will now consider the reasonableness of the Ministry's decision under the PWD criteria at issue in this appeal.

Severe Physical Impairment

The advocate submitted that the Appellant has been diagnosed with several health conditions which severely impair his mobility and physical functioning. For example, he is restricted to walking only 1 to 2 blocks in ideal circumstances and to lifting and carrying less than 5 lbs. Because of chronic pain and fatigue, all basic mobility tasks take him at least 3 times longer than normal; for example, activities such as dressing and bathing, and struggling out of chairs and bed. He also needs help with many tasks which requiring standing, bending or lifting.

In its reconsideration decision, the Ministry indicated that it considered the Appellant's self-reports as well as the information provided by the Appellant's doctor. The Ministry acknowledged that the Appellant takes longer to manage areas of mobility and physical ability; however, it was not satisfied that the information provided is 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 Appellant's doctor of more than 20 years who completed the physician's and assessor's reports.

The doctor diagnosed the Appellant with Hepatitis C, liver transplant, sleep disorder, chronic back pain and chronic abdominal pain. The Appellant described generally the same conditions as restricting his mobility and physical abilities so that all basic mobility tasks take him at least 3 times longer than normal. For example, the Appellant indicated that he can only walk 1-2 blocks in ideal circumstances, and walking any distance outdoors takes him at least 3 times longer than normal. He needs to stop frequently to relieve increasing pain and fatigue. Dressing, bathing and getting out of bed take 3 times longer than normal because of severe pain. He submitted that his impairments also prevent him from doing basic housekeeping tasks, laundry, cooking regular meals and shopping for

groceries and other items. He stated he can only lift 5 lbs., but generally avoids lifting altogether.

In the physician's and assessor's reports, the doctor also reported that the Appellant's physical functioning abilities were limited; for example, walking outdoors 1-2 blocks unaided on a flat surface and lifting is difficult. Like the Appellant, the doctor described all mobility tasks as taking 3 times longer than normal and that the Appellant must stop and rest frequently. However, even with these restrictions, the doctor reported that the Appellant manages all areas of mobility and physical ability independently, including walking indoors/outdoors, climbing stairs, standing, and lifting. The doctor also reported that the Appellant independently manages daily living activities which require physical abilities, such as dressing, bathing, going to/from stores and getting in/out of a vehicle. Neither the Appellant nor the doctor indicated that the Appellant uses any assistive aids. As for cooking and housekeeping, the doctor wrote only that the Appellant lives with his mother who does all these. Therefore, when the evidence is considered as a whole, the Panel finds that the Ministry reasonably determined that the information provided is not evidence of a severe physical impairment.

Severe Mental Impairment

The Appellant's position is that depression, anxiety and lack of motivation affect his ability to get through each day and he is socially isolated.

The Ministry's position is that it is not satisfied that the information provided is evidence of a severe mental impairment.

The Panel's Findings

Although the Appellant described dealing with depression, lack of motivation, a lot of anxiety, frustration and stress, the doctor provided no diagnoses of any mental health condition. The Appellant also stated that he is socially isolated and has difficulty motivating himself to get through each day. He has difficulty making decisions, planning ahead, doing the most important thing first and finishing tasks. The doctor, on the other hand, only noted a significant deficit and major impact to motivation, and a minimal to moderate impact to emotion (depression etc.). The doctor did add that the Appellant experiences depression at times and anxiety, doesn't feel like doing anything and gets tired. However, the doctor reported that the Appellant independently manages daily living activities which require cognitive and emotional functioning, such as taking medications and all areas of social functioning, with the exception of marginal functioning with extended social networks. Therefore, when all of the evidence of the doctor is considered with that from the Appellant, the Panel finds that the Ministry reasonably determined that the information does not establish that the Appellant has a severe mental impairment.

Restrictions to Daily Living Activities

The advocate submitted that, as a result of the Appellant's severe impairments, he either requires significant assistance or takes considerably longer to complete his daily living activities. In addition to significant restrictions to all areas of mobility, the Appellant needs assistance with such activities as carrying purchases home, with lifting heavy laundry loads, with cleaning, with cooking and with any tasks requiring bending, lifting or which are remotely physical.

The Ministry submitted that, as the majority of daily living activities are performed independently or require little help from others, the information from the prescribed professional does not establish that

the Appellant's impairment 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 professional in this case is the Appellant's doctor of more than 20 years.

Although, in the assessor's report, the doctor wrote that all areas of mobility and physical ability take 3 times longer than normal the doctor nevertheless reported that the Appellant manages all such activities independently. In addition, the doctor reported that most daily living activities are managed independently, including all areas of personal care, shopping (including carrying/lifting), paying rent/bills, medications, getting in/out of a vehicle and all aspects of social functioning. As for basic housekeeping and meals, the doctor wrote "N/A" and reported that the Appellant's mother does all the cooking and housekeeping, but did not explain why. Therefore, the Panel finds that, based on the physician and assessor reports, the Ministry reasonably determined that the information from the prescribed professional does not establish that the Appellant's impairments directly and significantly restrict his daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The advocate submitted that the Appellant requires significant help with daily living activities. His mother provides that, especially with all the cooking and housekeeping, with helping monitoring his emotional demands and with helping getting him motivated.

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 did not establish that the Appellant requires an assistive device or the services of 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. The doctor indicated that the Appellant does not need any assistive aids for his impairments or in fact any assistance for the majority of daily living activities. The doctor only reported that the Appellant's mother does all the cooking and housekeeping, but with no other explanation. Therefore, the Panel finds that based on the doctor's physician and assessor reports and based on the Ministry's 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 confirms the Ministry's reconsideration decision because it was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances.