

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) December 8, 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

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.

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

1. Appellant's PWD application consisting of:

- His self-report dated July 14, 2014.
- A physician's report and an assessor's report both completed on July 15, 2014 by the same doctor who indicated that Appellant has been his patient for 4 years and he had seen the Appellant between 4-10 times in the past 12 months. The doctor added "walk-in clinic 'family doctor'".

2. Appellant's November 28, 2014 request for reconsideration with a written statement providing information about his conditions and argument about the PWD criteria.

For this appeal, the Appellant submitted two written statements dated December 14, 2014 and January 5, 2015. In the latter he indicated that his "letter of the 24th" stands, which the Panel notes is probably a typing mistake and the Appellant was referring to his statement dated December 14, 2014. Both statements have information about the Appellant's impairments and also his written arguments. The Panel finds that the information about the Appellant's impairments is consistent with and tends to corroborate the evidence the Ministry had at reconsideration. Therefore, the Panel admits that information pursuant to section 22(4) of the Employment and Assistance Act and has summarized it below. As for the Appellant's written arguments, the Panel will consider those under Part E – Reasons for the Panel's Decision.

For this appeal, the Ministry relied on its reconsideration decision.

The Panel has summarized the evidence relevant to the PWD criteria at issue as follows:

Diagnoses

In the physician's report, the doctor diagnosed the Appellant with recurrent cardiac syndrome with collapse (onset April 2014), carpal tunnel syndrome with loss of functional control right and left (onset 2011), smoking related COPD [chronic obstructive pulmonary disease] (onset 2009), DDD [degenerative disc disease] (onset 1986), and bladder cancer (onset 2011). The doctor diagnosed no mental health conditions.

Physical Impairment

The Appellant described his impairments as follows:

- Made his living in trades work; work was intensely physical by nature.
- On several occasions when exhausting himself at work has suffered from difficulty breathing and chest pain; happened about 5 times; has been to emergency ward twice; doctor said if he pushes it he could just "have the Big One" and drop dead; he is not suicidal/heroic.
- Is older; can't work – not in trades anyway; has to monitor himself; never overdue the stress on his body; makes him unemployable in his given trades.
- Is stiff, sore, old and used up like most old workers are.
- Is slow to dress in the morning; hands a bit shaky; trouble sleeping; sore joints, regular old guy

stuff; seems to make him non-competitive in a very competitive market.

- Cured of bladder cancer but was reduced from regular employment to lower paying, itinerant employment.
- Has nerve damage in both hands from carpal tunnel syndrome; has lost fine motor control in his right hand – at times displaying Parkinson-like tremors; consequence of 40 years of hard labour using large power tools; difficult to write, print, type; can't spin noodles on a fork.
- Despite impediments has scraped by the last 3 years, meeting rent and modest living requirements; doesn't drink alcohol, gamble or do drugs.
- About 8 months ago, started having cardiac attacks; first 2-3 just sat down and waited for pain in chest to abate; followed by a larger event - kept in ER [emergency room] for 3 days; cardiologists told him they detected markers for heart damage in his blood; then had one more attack putting him in hospital for 1½ days; again detected markers for some heart damage.
- Has "effort angina" – physical exertion precipitates malfunction of his heart and some incidental heart damage with each event; can no longer do physical labour safely.
- If does even moderately hard work believes will be hospitalized and/or drop dead.
- Is unemployed and unemployable for serious medical reasons.
- If doesn't qualify for disability assistance will be homeless – direct and significant outcome of his illness; homelessness will severely impair his ability to perform daily living activities.
- Can walk 4 blocks; however, when does so is very attentive and cautious; brings along his nitroglycerin and fully charged cell phone; doesn't carry anything and when feels over-tasked promptly sits down; doesn't walk up any slopes; doesn't drive without a nitroglycerin dispenser.
- For half his awake time, he is overcome with fatigue (common symptom of cardiac illness); not psychological depression; getting out of bed, dressing, doing household chores – all daunting tasks on those days;
- In last month (before December 14, 2014) there were about 7 days during which he never got out of bed at all, except for biological necessities; just coping right now.
- Has had to use 2 hands to control the computer mouse to prepare his appeal submission; opening jar lids is challenging.
- Is not completely paralyzed and completely helpless, but is significantly disabled.

The doctor provided the following information about the Appellant's physical conditions/impairment:

- With heavy labour work had recurrent collapse with chest pain, sweat, nausea; has been to the ER two times; syndrome is undiagnosed; unstable angina. This is a primary concern.
- Condition is likely cardiac in origin and requires alteration of work effort; not compatible with work the Appellant does; requires minimized stress.
- Can walk 4 + blocks unaided on a flat surface; can climb 5+ steps unaided; can lift 15-35 lbs. – "no repeated lifting"; no limitations with remaining seated.
- Poor writing ability – "hand dexterity limited".
- Independently manages the following areas of mobility and physical ability: walking indoors/outdoors, climbing stairs, standing, and carrying and holding.
- Needs periodic assistance with lifting – "cardiac syndrome precludes repeated lifting heavy objects".
- "Hard working motivated labourer with frightening cardiac syndrome precluding work he is trained for".

Mental Impairment

The doctor reported that the Appellant has:

- No significant deficits with cognitive and emotional functioning.
- Moderate impact to motor activity; minimal impact to motivation and other emotional or mental problems – “mild depression”; no impacts to 11 other areas of cognitive/emotional functioning.

Daily Living Activities

The doctor reported that the Appellant:

- Has been prescribed medication and/or treatments that interfere with his ability to perform daily living activities – one cardiac medication that decreases energy.
- Independently manages all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.
- Independently manages all areas of social functioning, except for the ability to deal appropriately with unexpected demands – wrote “unable to comment”.
- Has good functioning with his immediate and extended social network – “limited social network”.

Help with Daily Living Activities

The doctor reported that the Appellant:

- Does not require any prostheses or aids, or any help to maintain him in his community.
- Has no one providing assistance and 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

Applicable Legislation

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

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's Findings and Decision

The Panel reviewed and considered all of the arguments the Appellant submitted regarding the interpretation and application of legislation applicable to his circumstances. The Panel has summarized them as follows. The Appellant submitted dictionary and internet definitions of disability and medical disability to be considered in his case. He noted that in those definitions there is no reference to restrictions to daily living activities or requiring assistance with daily living activities. The Appellant also referred to information in the Ministry's web site regarding the province's program for Persons with Disabilities and stated that he found it impossible to negotiate uniformity of purpose between the stated purpose of the program and the restrictive application of the regulations.

First, the Panel's jurisdiction in this appeal is limited to the review criteria explicitly stated in section 24 of the Employment and Assistance Act. That statute states that the Panel can only consider

whether the Ministry's reconsideration decision was reasonably support by the evidence and/or was a reasonable application of the enactments applicable to the Appellant's circumstances. The applicable enactments in the Appellant's case are the EAPWDA and its regulations in the EAPWDR. The applicable sections of those enactments are cited above. These are the provincial laws which define the criteria for establishing whether a person, such as the Appellant, qualifies for disability assistance. Therefore, these are the provincial laws which the Ministry must apply to the information it receives when a person applies to qualify for disability assistance. In the following sections, the Panel will address how each of the requirements in the EAPWDA and the EAPWDR apply to the evidence provided about the Appellant's circumstances.

The Panel also notes that, in contrast to the Canada Pension Plan disability legislation and the province's Person with Persistent Multiple Barriers legislation, the ability to work and/or find work are not criteria for designation as a PWD and for qualifying for disability assistance under this province's EAPWD statute.

The Panel will now consider whether the Ministry reasonably determined that the PWD criteria, as set out in the above legislation, were not met by the Appellant.

Severe Physical Impairment

The Appellant's position is that the Ministry erred in measuring the extent of his impairment. He submitted that his medical disability is chronic, very real and life threatening. The Appellant stated that his situation is tenuous and the threat of further heart damage or death makes his impairment severe. He described how daily living activities such as walking, dressing, lifting, using his hands and generally moving about are restricted by fatigue, nerve damage in his hands and his fear of further heart condition episodes. The Appellant wrote that he is significantly disabled.

In its reconsideration decision, the Ministry wrote that it reviewed the Appellant's self-report and the information submitted with the request for reconsideration. The Ministry also noted that it reviewed all of the information provided by the Appellant's doctor in the physician's and assessor's reports. Based on the information provided, the Ministry was not satisfied that the evidence established that the Appellant has a severe physical impairment.

The Panel's Findings and Decision

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 and the ability to manage the daily living activities defined in section 2(2)(b) of the EAPWDR. This includes evidence from the Appellant as well as from medical professionals, such as the Appellant's doctor, that the conditions directly and significantly restrict the defined daily living activities.

The Panel acknowledges that the Appellant has serious medical conditions which restrict his physical functioning abilities. His doctor diagnosed the Appellant with recurrent cardiac syndrome and collapse, carpal tunnel syndrome with loss of functional control right and left, smoking related COPD, DDD and bladder cancer. The Appellant wrote that the last condition was cured. The Appellant described how he is slow to dress in the morning, his hands are a bit shaky, he has trouble sleeping and he has sore joints. He wrote that he has nerve damage in both hands from carpal tunnel

syndrome and has lost fine motor control in his right hand – at times displaying Parkinson-like tremors, making it difficult to write, print, type and use utensils. The Appellant also stated that he can walk 4 blocks; however, when he does so he is very attentive and cautious, bringing along his medication. He also doesn't carry anything when walking and he doesn't walk up any slopes. When awake, he is overcome with fatigue from his cardiac illness and getting out of bed, dressing, doing household chores are all daunting tasks. He also stated that during one period he did not get out of bed for about 7 days. The Appellant's submissions also focused on his inability to continue working because of the effects of his physical conditions.

As the Panel noted above, the ability to work is not a criterion for PWD designation. Also, the Panel notes that although the Appellant's doctor described limitations with dexterity and lifting, as well as concerns about the effects from cardiac symptoms, the doctor did not confirm the limitations in mobility and physical ability described by the Appellant. In fact, the doctor reported neither severe nor moderate restrictions to the Appellant's ability to walk and climb stairs, only some restrictions with lifting; the cardiac syndrome precludes repeated lifting of heavy objects. Also, the doctor reported that the Appellant independently manages the daily living activities which generally require physical abilities, such as personal care, basic housekeeping, shopping, cooking and using transportation. The Panel also notes that, other than his use of medication and financial help, the Appellant provided no information about any other help he needs or receives for his physical restrictions. Therefore, based on all of the evidence submitted, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant has a severe physical impairment.

Severe Mental Impairment

The Panel notes that the Appellant did not submit that he had a severe mental impairment and there was no diagnosis of any mental health condition. He also wrote that his fatigue was from cardiac illness, not depression. As for deficits to or impacts to cognitive and emotional functioning, the doctor reported only a moderate impact with motor activity, and minimal impacts with motivation and other emotional or mental problems due to mild depression. The doctor provided no other details. Therefore, the Panel finds that the Ministry reasonably concluded that there was not enough evidence to establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant argued that a series of heart attacks entails episodic illness and that being periodically bed-ridden and in the ER is a severe restriction to his daily living activities. He submitted that he has a medical infirmity and he has very little money and no assets. He wrote that he cannot work and meet his rent so shortly he will be homeless, and then there will be an end to the performance of normal and necessary daily living activities as defined by the regulations.

The Ministry's position is that it relied on the medical opinion and expertise of the Appellant's physician to determine whether the Appellant met this requirement for PWD designation. Based on the information provided by the physician, the Ministry determined that it did not have enough evidence to confirm that the Appellant's impairment significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

The Panel's Decision

To qualify for PWD designation, the Appellant must also provide evidence that he meets the

requirements in section 2(2)(b) of the EAPWDA. That section requires a prescribed professional's opinion confirming that the Appellant's severe physical or mental impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. The daily living activities that the Ministry must consider are defined in section 2(1) of the EAPWDR and also are listed in the physician's and assessor's reports. The prescribed professional in this case is the Appellant's doctor who completed the physician's and assessor's reports.

Although the Appellant's doctor reported that the Appellant has been prescribed medication that decreases energy and interferes with his ability to perform daily living activities, the doctor also reported that the Appellant independently manages all of the daily living activities listed in the assessor's report. The only exception is lifting for which the doctor noted no repeated lifting and also that periodic assistance is needed. However, the doctor provided no information about what that assistance would be or how often it is needed. In fact, the doctor reported that the Appellant uses no prostheses or aids, and needs no help with any daily living activity. Therefore, the Panel finds that, based on the reports from the Appellant's doctor, the Ministry reasonably determined that there was not enough evidence to confirm that the Appellant has a severe physical or mental impairment which directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; that is, the Appellant did not meet this legislated requirement.

Need for Help with Daily Living Activities

The Appellant's position is that he needs financial assistance to avoid becoming homeless. He cannot work and struggles with physical mobility and dexterity. He provided no information about any other assistance he needs or receives.

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 doctor did not establish that the Appellant requires any assistive devices, the significant help of another person or an assistance animal.

The Panel's Decision

Another legislated criterion for PWD designation, 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 needs help with those activities. In this case the doctor reported that the Appellant needs no prostheses or assistive devices, no help with daily living activities and no assistance animal. The Panel finds, therefore, that based on the Appellant's doctor's 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 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.