

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) January 27, 2015 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the 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 September 11, 2014.
- A physician's report completed on October 20, 2014 and an assessor's report completed on October 10, 2014 by his doctor who indicated that Appellant has been his patient since August 12, 2014. The doctor noted that he had seen the Appellant between 2-10 times in the past 12 months and that he sees the Appellant often to review his file and medical reports.

2. Appellant's request for reconsideration dated January 9, 2015 with a questionnaire prepared by his advocate and completed by his doctor on January 19, 2015. The Appellant also submitted and the following reports which were sent to his doctor:

- Medical Imaging Report dated January 4, 2015 indicating central to left paracentral small disc protrusion at L4-5 producing mild mass effect on the anterior thecal sac.
- Medical Imaging Report dated January 4, 2015 indicating mild progression of neural foraminal narrowing on the left at C6-7 and on the right and C5-6 – only left side shoulder pain.

In his notice of appeal, the Appellant stated that he disagrees with the Ministry's decision because his shoulder and his neck always hurt, and his hands are numb. It is hard to get a job because he is still injured and it will be hard to work if he does have a job. He wrote that he needs to be healed so that he can re-enter the work force.

At the hearing, the Appellant described the same physical impairments diagnosed by his doctor and that he listed in his self-reports and in his notice of appeal. He also said that his pain is generally consistent day-to-day, with some ups and downs. The pain makes it difficult for him to get out of bed, get dressed, do household tasks like the dishes and laundry, do sports with his child and generally take care of his child. He needs help with all daily tasks because his mother can only help sometimes. The Appellant's mother confirmed the pain and restrictions that the Appellant experiences and that he needs help to do chores and take care of his son.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in the Appellant's notice of appeal and the testimony from him and his mother as being consistent with and tending to corroborate the evidence that the Ministry had at reconsideration.

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

The Panel has summarized the evidence from the record that is relevant to the criteria at issue in this appeal, as follows.

### *Diagnoses*

The Appellant's doctor diagnosed the Appellant with c-spine degenerative disc disease, severe early arthritis c-spine, neurological-paresthesia hands, blindness in left eye and depressive mood/chronic major depression.

### *Physical Impairment*

The Appellant described his disabilities as follows:

- In 2012, had a work related injury and suffered 2 herniated discs in his neck, a bone chip in his neck and left shoulder injury; has had numbness in his hands since then and has been unable to complete his daily living activities without assistance from others.
- Has to use a handrail at all times when climbing stairs; is unable to lift up to 10 lbs. at a time; is only able to sit for up to 20 minutes at a time; is unable to stand for longer than 20-30 minutes.
- Has to sit to get dressed; has difficulty with putting socks and shoes on; has to roll out of bed when getting up in the morning; has to use chair arms when getting in/out of a chair.
- Unable to do housekeeping requiring bending; unable to do vacuuming.
- Has to use eyeglasses to read all prices and labels; unable to carry purchases over 10lbs.
- For meals, has difficulty gripping anything due to numbness in his hands; has burnt himself before and not realized the severity due to numbness.
- Has to use seat and door for support to get in/out of a vehicle.

In the physician's and assessor's reports, and in the January 2015 questionnaire, the Appellant's doctor provided the following information regarding the Appellant's impairments:

- Has chronic c-spine pain from disc injury; chronic neck pain, chronic pain in left shoulder and weakness in left shoulder and hand; tendinitis/osteo-arthritis, radiculating symptoms in his hands; chronic weakness in body; chronic fatigue; is unable to work.
- Does not require any prosthesis or aids for his impairment.
- Can walk 4+ blocks unaided on a flat surface – can walk around a city block then needs to stop; can lift 5-15 lbs. with his left arm and 40 lbs. with his right arm; can sit for 30 minutes – gets uncomfortable with pain in his shoulder and neck; uses hand rails when climbing stairs because of blindness in one eye and also neck and back pain cause difficulty with managing stairs; can stand for an hour – complains of pain in left shoulder and neck.
- Difficult to lift and carry more than 5 lbs. with his left arm; weakness in left hand radiculating from neck injuries drops objects.

### *Mental Impairment*

The Appellant described his disabilities as follows:

- Has difficulty putting thoughts into words or getting thoughts clearly out to others.

In the physician's and assessor's reports, the Appellant's doctor provided the following information about the Appellant's conditions:

- Significant deficits with cognitive and emotional functioning in emotional disturbance – depression due to situation and chronic pain.
- Minimal impact in 3 out of 14 areas cognitive and emotional functioning - emotion, attention/concentration, and motivation; no impact in all other areas.
- Chronic depression and chronic fatigue; depression from financial stresses as single parent and not being able to work; having problems with motivation.
- Depression, stress of financial difficulties cause problems with speaking and thoughts; has difficulty with reading and writing because legally blind in left eye.

### *Daily Living Activities*

The doctor indicated that the Appellant has not been prescribed medications and/or treatments that interfere with his daily living activities, adding that the Appellant does not want to use medications.

The doctor reported the following restrictions in the Appellant's ability to manage daily living activities:

- Mobility: independently manages walking indoors/outdoors and standing; takes significantly

longer climbing stairs - uses hand rails; has sight/depth perception problems; blind in left eye.

- Personal care: independently manages grooming, bathing, toileting, feeding self/regulating diet; periodically restricted and takes significantly longer to dress – chronic pain in neck/shoulder arm; takes longer transferring in/out of bed and on/off chair due to chronic pain.
- Basic housekeeping: needs continuous assistance and takes significantly longer because of pain in his shoulder and neck; unable to vacuum or do tasks requiring bending; difficult lifting laundry; has to stop often when using his left arm, right hand; regularly drops objects.
- Shopping: independently manages going to/from stores, reading prices/labels/ making appropriate choices/paying; needs continuous assistance and takes significantly longer with carrying purchases home because of left arm and shoulder; uses carts when shopping.
- Meals, paying rent/bills, medications and transportation – manages all independently.
- Social functioning – manages independently; has good functioning with immediate and extended social networks.

#### *Help with Daily Living Activities*

The doctor reported that the Appellant:

- Receives help from his mother sometimes; often rests so takes longer to clean house.
- Does not need any prostheses or aids for his impairment.

In the assessor's report, the doctor crossed out the sections for assistive aids and 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.*

### **Physical Impairment**

The Appellant's position is that he daily experiences chronic c-spine pain from a disc injury, chronic neck pain, chronic pain and weakness in his left shoulder and hand, as well as weakness, tendinitis and radiculating symptoms in his hands. These conditions restrict his ability to move, to lift and carry things, and his ability to manage daily tasks such as dressing, cooking and housekeeping. The Appellant also submitted that he is blind in his left eye, impacting his mobility especially on stairs.

In its reconsideration decision, the Ministry indicated that it reviewed all of the reports from the Appellant and his doctor. Based on that information, it determined that the impacts from the Appellant's conditions are more in keeping with a moderate not a severe, physical impairment.

*The Panel's Findings*

The diagnosis of a serious medical condition or a medical professional's statement that a condition or an impairment is severe does not in itself establish a severe impairment for the purposes of satisfying the criteria for PWD designation. To meet the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment directly restricts daily functioning and the ability to manage the daily living activities defined in section 2(2)(b) of the EAPWDR. Such evidence includes information from the Appellant as well as from medical or prescribed professionals.

The Appellant stated that he is unable to return to work. The Panel 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 qualifying for disability assistance under this province's EAPWD legislation.

The Appellant's doctor diagnosed the Appellant with c-spine degenerative disc disease, severe early arthritis c-spine, neurological-paresthesia hands and blindness in his left eye. The Appellant described how these conditions impact him on a daily basis. He stated that consistent chronic back, neck and shoulder pain restrict his movements and his ability to do various tasks. For example, it takes him much longer to get out of bed and to dress. He has to use chair arms when getting in/out of a chair. The Appellant also submitted that he is unable to lift up to 10 lbs. at a time, is only able to sit for up to 20 minutes at a time and is unable to stand for longer than 20-30 minutes. As for household chores, he is unable to do housekeeping that requires bending and cannot vacuum. The numbness in his hands causes him to drop things. The Appellant stated that he also has difficulty using stairs because of the pain and the blindness in his left eye.

The Appellant's doctor described the Appellant's medical conditions as causing chronic neck and back pain, weakness in the left shoulder and weakness in his hands. The doctor also reported restrictions in the Appellant's functioning abilities, but indicated that the Appellant can lift 5-15 lbs. with his left arm and 40 lbs. with his right arm. Also, according to the doctor, the Appellant independently manages mobility and physical activities, such as walking indoors and outdoors, standing, all aspects of personal care, shopping, meal preparation and transportation, although some take significantly longer. Therefore, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that Appellant's impairments are more in keeping with a moderate, not a severe, physical impairment.

**Mental Impairment**

The Appellant's position is that his doctor diagnosed him with chronic major depression and chronic fatigue. These conditions and problems with motivation impact his ability to sleep and to function.

The Ministry determined that there was not enough evidence to establish a severe mental impairment.

*The Panel's Findings*

The Appellant described difficulties with motivation and with putting thoughts into words or getting thoughts clearly out to others. The Appellant's doctor described the Appellant's condition as chronic major depression. However, the doctor reported only minimal impacts to emotion, to attention and concentration and to motivation. Also, the doctor indicated that the Appellant independently manages

daily living activities requiring cognitive abilities, such as managing finances and managing medications, as well as all areas of social functioning. Therefore, based on all the evidence, the Panel finds that the Ministry reasonably determined that there was not enough information to establish a severe mental impairment.

### **Restrictions to Daily Living Activities**

The Appellant's position is that his impairments and especially the chronic, daily pain he experiences directly and significantly restrict his ability to manage daily living activities.

The Ministry wrote that it relies on the medical opinion and expertise of the Appellant's doctor to determine if the Appellant's impairments significantly restrict his ability to perform daily living activities, either continuously or periodically for extended periods. The Ministry indicated that it reviewed all aspects of the doctor's reports. Based on the doctor's opinions, the Ministry determined that the information did not demonstrate that the Appellant met this legislated requirement.

#### *The Panel's Findings*

To qualify for PWD designation, the Appellant must provide a prescribed professional's opinion confirming that his severe physical or mental impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. The prescribed professional in this case is the Appellant's doctor. It is not enough, however, for the doctor to merely report that activities are restricted. The doctor must assess the degree of restriction and the extent to which assistance is needed to manage the daily living activities defined in section 2(1) of the EAPWDR and also listed in the physician's and assessor's reports.

The Appellant's doctor reported that some daily activities are restricted by the Appellant's chronic pain and numbness; for example, taking longer to dress and transferring in/out of bed, and needing continuous assistance with basic housekeeping and with carrying purchases home. However, according to the doctor, even with some restrictions the Appellant manages most daily living activities independently, including all areas of personal care, all areas of mobility, all areas of meal preparation, managing finances and medications, and all areas of social functioning. Therefore, based on the professional opinion of the Appellant's doctor, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 2(2)(b)(i) of the EAPWDA.

### **Help with Daily Living Activities**

The Appellant's position is that he needs help with all daily living activities.

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 or an assistive device.

#### *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 needs help with those activities. The doctor reported only that the Appellant's mother helps sometimes. The doctor also specifically indicated that the Appellant did not need any assistive aids. Therefore, based on the doctor's evidence and based on the Ministry's determination that the

Appellant's daily living activities are not directly and significantly restricted, the Panel finds that the Ministry reasonably concluded that the requirements in section 2(2)(b)(ii) of the EAPWDA were not satisfied.

**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.