

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 9, 2015 which found that the appellant did not meet the 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 he has a severe physical impairment that 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 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

The appellant did not attend the hearing. However, a Release of Information provided to the panel dated February 16, 2015 and signed by the appellant authorized his mother to attend the hearing and make decisions on his behalf and the hearing proceeded on that basis.

The evidence before the ministry at the time of the Reconsideration Decision included the appellant's Request for Reconsideration ("RFR") dated January 6, 2015 as well as his PWD Application comprised of the following:

1. Applicant information and self-report ("SR") prepared by the appellant and dated November 12, 2013;
2. Physician report ("PR") dated February 12, 2012 and prepared by the appellant's general practitioner ("the GP") of 10+ years; and
3. Assessor report ("AR") dated February 12, 2014 and also prepared by the GP.

### ***Diagnoses***

In the PR and AR, the appellant is diagnosed by the GP with interstitial cystitis with severe pain, low bladder urine volume tolerance and an extremely frequent need to void. The date of onset is noted as being 2009.

### ***Physical Impairment***

In his RFR, the appellant reports that his condition is chronic. He can walk more than four blocks but must ensure adequate washroom facilities when planning his route as the pain of his condition may increase causing a sudden need to void. He is also able to climb more than 5 steps unaided but he is limited in how long he can remain seated as he must get up frequently to void. He notes that he takes a variety of medications for pain and to attempt a rebuilding of his bladder wall. These medications cause a variety of physical and psychological side effects.

In the SR, the appellant describes his condition as one that is life-long and characterized by ulcers on his bladder wall which cause radiating pain throughout his lower pelvic area. When his bladder fills with urine, the ulcers become aggravated and he is required to frequently void to relieve that pain. Depending on pain levels, he may have to void from 10 to 70 times per day. The frequency of voiding is causing the appellant's bladder to become smaller making symptoms worse. He reports being in constant pain.

In the SR the appellant describes the impacts of this condition, and particularly the need to frequently void (35-70 times per day on average), as follows:

- Difficulty concentrating at school;
- Difficulty falling asleep due to pain;
- No social life due to the embarrassment of his symptoms;
- Limited exercise, particularly jogging or taking walks due to a lack of public washrooms;
- Inability to maintain employment;
- Inability to obtain a driver's license due to the inability to sit through the written test; and
- Having to take two medications that have potentially dangerous side effects.

In the PR, the GP writes that:

- The appellant's condition is severe with a high degree of pain, low bladder urine volume tolerance and an extremely frequent need to void. He has a very high degree of social isolation. Medications have had very little benefit. He is unemployable at present due to frequent voiding.
- The medications he takes can cause drowsiness and the duration of the physical condition and

medications is life-long.

- The duration of the appellant's impairment is unknown and there are no remedial treatments.
- The appellant requires no aids or prostheses for his impairment.
- Functional skills reported indicate that the appellant can walk 4 or more blocks (but may need to stop to void) and climb 5 or more steps unaided, he has no limitations lifting but can only remain seated for less than 1 hour as he needs to get up frequently to void.

In the AR, the GP reports that:

- The appellant lives with family, friends or a caregiver and that his physical impairment causes pelvic pain, frequent voiding, social isolation and low mood/anxiety and decreased self-esteem.
- The appellant's ability to communicate through speaking and hearing is good while reading and writing are reported as satisfactory due to an inability to sit for sustained periods due to frequent voiding.
- The appellant described as being independent in all aspects of mobility and physical ability but that this is limited by frequent voiding requirements.

### ***Mental Impairment***

In the RFR, the appellant describes suffering from depression that threatens to overwhelm him when he gets discouraged. In the SR, the appellant describes experiencing social isolation as a result of his condition.

In the PR, the GP has not specifically diagnosed the appellant with a mental condition or provided a date of onset but has indicated that the appellant experiences significant deficits with cognitive and emotional function in the area of emotional disturbance commenting that social isolation, chronic pain and frequent voiding lead to anxiety and low mood.

In the AR, the GP has noted that the appellant experiences a major impact on his daily functioning in the area of bodily functions and other emotional or mental problems. The GP comments that the appellant experiences social isolation resulting in an inability to go to school and work which overall leads to low mood, anxiety and decreased self-esteem. The GP describes a moderate impact on consciousness, emotion and attention/concentration, a minimal impact on executive and no impact on impulse control, insight and judgment, memory, motivation, motor activity, language, psychotic symptoms and other neuropsychological problems.

### ***Daily Living Activities (DLA)***

The appellant writes in the RFR that he is not independent as he is limited by voiding requirements. He writes that his family helps him with his DLA.

In the PR, the GP indicates that the appellant takes medications that interfere with his ability to perform DLA insofar as they cause drowsiness. In the AR, the GP reports on the appellant's ability to carry out his DLA as follows:

For personal care, the appellant is independent dressing, grooming, bathing, feeding himself and regulating his diet, transfers in and out of bed and transfers on and off a chair. He is noted as taking significantly longer with toileting as he voids up to 70 times each day.

For basic housekeeping, the appellant is described as independent with laundry and basic housekeeping.

For shopping, the appellant is assessed as independent reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home but requires periodic assistance from another person going to and from stores. The GP notes that the appellant avoids this task however due to the need to

void frequently.

For meals, the appellant is assessed as independent with meal planning, safe storage of food, cooking and food preparation.

The appellant is assessed as independent with all aspects of paying rent and bills and with safe handling and storage of medications. No indication is given as to the appellant's ability to fill/refill prescriptions or take medications as directed. The appellant is independent getting in and out of a vehicle but is noted by the GP as not using public transit as he is then unable to stop to void.

With respect to social functioning, the GP indicates that the appellant requires periodic support or supervision making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others but requires continuous support or supervision developing and maintaining relationships. The appellant is noted as having marginal functioning with his immediate and extended social networks and he is described by the GP as having low mood, anxiety and decreased self-esteem causing increased social isolation and needing constant family support.

### ***Need for Help***

In the PR, the GP did not indicate that the appellant requires an assistive device. In the AR, the GP indicates that the appellant receives help from family and that was confirmed by the appellant's mother at the hearing.

In his Notice of Appeal which is dated January 28, 2015, the appellant writes that he disagrees strongly that his impairment does not significantly restrict his ability to perform DLA noting that in his view, he has a "half-life." He notes that his pain is never less than 4.5 out of 10 and that it can escalate so rapidly that he is immediately incapacitated and that each time he has to void it can take him from 5 to 15 minutes depending on his pain and medication levels with the result that he spends up to 17 hours each day on the toilet.

The appellant states further that he is not independent with his DLA. When he experiences increased pain, his medication impacts his thinking and he cannot drive. He notes having attended the emergency room due to an accidental overdose caused by a very high recommended dosage.

The appellant relies on his mother for a percentage of his transportation due to his medication and pain spikes. He can't take the bus due to a lack of washrooms. Medications require him to rely on his mother when making decisions about his daily life and he further relies on her and his brother to elevate his moods.

The appellant described the various specialists he has met with and the ultimate diagnosis of his physical condition. He is currently waiting to see a new specialist.

### **Evidence At Hearing**

At the hearing, the appellant's mother described the PWD application as being incomplete due to a lack of time spent on it by the GP and she suggested that delays were occasioned in the completion of the application due to it becoming lost. She stated that the appellant does suffer emotionally due to his condition, he is stressed, takes pain medication and voids frequently while working resulting in not being called back in. She referred to the PR and the AR and the GP's confirmation that the appellant experiences deficits with cognitive and emotional function and impacts on his daily function. She stated that the appellant suffers from a chronic illness and that he is in chronic pain. She stated that her son suffers from depression as a result.

In response to questions, the appellant's mother stated that she talks with him every night to support him emotionally, she takes him everywhere, she pays his bills, buys his medications, does all the grocery shopping and does all of the housekeeping. She noted that the appellant can take care of himself but that he stays

home and can't go for a walk or a run because of frequent voiding requirements. If she is not available, he is able to take himself to local medical appointments. In the last year he has attended the hospital emergency room once due to a reaction to medication and once due to pain escalation.

The appellant's mother commented on the appellant's physical and mental symptoms and the impact they had on his DLA which had previously been set out in the RFR and the PWD application. The panel was therefore satisfied that the appellant's mother's oral evidence was in support of the information and records that were before the ministry when the decision being appealed was made and as such it is admitted pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on the Reconsideration Decision and provided no further evidence.

In response to questions, the ministry representative was unaware of any delays in the PWD application being received or processed. The ministry representative further commented that when determining whether an applicant for PWD designation has a severe mental impairment, the ministry will look to see whether a diagnosis of a mental condition is made but will also look at all factors set out in the evidence before it.

## 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 met the age requirement and that he has a severe physical impairment that 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 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.

The criteria for being designated as a 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.

### **Severity of impairment**

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

A diagnosis of a serious medical condition or conditions 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 one 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 GP.

### **Severity of mental impairment**

The appellant's mother argued that the evidence supports a finding that the appellant suffers from a severe mental impairment.

The ministry argues that the evidence does not support such a finding and that the Reconsideration Decision was reasonable in that respect.

### *Panel Decision*

In the RFR and the SR, the appellant describes feelings of depression, anxiety and social isolation as a result of his physical condition. The overwhelming theme that can be drawn from the evidence is that the frequency and duration of voiding, the associated pain and the impact of the medications that he takes all cause him to be depressed, anxious, unable to concentrate and generally impact on his emotional well-being.

On review of the PR, while the GP does not specifically diagnose the appellant with a mental impairment, he does indicate that he experiences deficits with cognitive and emotional function in the area of emotional

disturbance commenting that social isolation, chronic pain and frequent voiding lead to anxiety and low mood. Further, in the AR the GP notes that the appellant experiences a major impact on his daily functioning in the area of bodily functions and other emotional or mental problems, a moderate impact on consciousness, emotion and attention/concentration, a minimal impact on executive function. The GP comments in the AR that the appellant experiences social isolation resulting in an inability to go to school and work which overall leads to low mood, anxiety and decreased self-esteem.

While the evidence indicates that the appellant experiences deficits with cognitive, emotional and daily function, these are secondary to the severe physical impairment that he suffers from. Further, of the deficits noted in the AR, only two are found by the GP to have a major impact on the appellant, three have a moderate impact and the remaining 9 categories have minimal or no impact. The panel further notes that for those DLA that require some measure of mental acuity such as regulating diet, making appropriate choices while shopping, meal planning and paying rent and bills the appellant is noted by the GP as being independent.

Considering all of the evidence, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe mental impairment as provided in section 2(2) of the *EAPWDA*.

### **Severity of physical impairment**

The ministry determined in the Reconsideration Decision that the appellant suffers from a severe physical impairment. On review of the evidence as set out above, the panel finds that determination to be reasonable under section 2(2) of the *EAPWDA*.

### **Restrictions in the ability to perform DLA**

The appellant's position is that his impairment directly and significantly restricts his ability to perform DLA on an ongoing basis.

The ministry's position is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by his physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

#### *Panel Decision*

Section 2(2)(b) of the *EAPWDA* requires that a prescribed professional, in this case the GP, provide an opinion that an applicant's severe impairment directly and significantly restricts his or her DLA, continuously or periodically for extended periods.

DLA are defined in section 2(1)(a) 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, either continuously or periodically for extended periods. In this case, the prescribed professional is the GP.

In the AR, the GP makes the following observations with respect to the appellant's ability to perform his DLA:

For personal care, the appellant is independent dressing, grooming, bathing, feeding himself and regulating his diet and transfers on and off of a chair and in and out of bed. The only activity that is qualified is toileting for which the GP comments that the appellant voids up to 70 times each day.

For basic housekeeping, the appellant is described as independent with laundry and basic housekeeping.



For shopping, the appellant is described as independent reading prices and labels, making appropriate choices, paying for purchase and carrying them home but requires periodic assistance going to and from the store which he avoids due to the need to frequently void.

For those DLA relating to his meals, the GP notes that the appellant is independent in all respects. He is similarly independent with all aspects of paying rent and bills.

With respect to social functioning, the evidence of the GP suggests a lack of independence. The appellant requires periodic support or supervision making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others and he requires continuous support or supervision developing and maintaining relationships. He has marginal functioning with his immediate and extended social networks, requires constant family support and is described as having low mood, anxiety and decreased self-esteem causing increased social isolation.

While the panel finds that the appellant is not assessed by the GP as independent in social functioning, he is assessed by the GP as independent with the vast majority of the other legislated DLA. Overall, based on this evidence the panel finds that the ministry was reasonable in finding that there is not sufficient evidence from a prescribed professional to establish that the appellant's mental and physical impairments directly and significantly restrict his ability to perform DLA, either continuously or periodically for extended periods under section 2(2)(b) of the *EAPWDA*.

### **Help with DLA**

The appellant's position is that that his impairments affect his DLA to the extent that assistance from others, primarily his mother, is necessary.

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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

In the PR, the GP indicates that the appellant does not require any aids or prostheses for his impairment and in the AR, the GP notes that the assistance that the appellant needs with DLA includes family. The evidence provided by the appellant and that from his mother indicates that she assists him with many DLA.

The panel finds however 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 a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.