

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated January 13, 2015 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet three of the five criteria required for PWD designation as set out in the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) section 2. The ministry found that the appellant meets the criteria of being 18 years of age or older and, that in the opinion of a medical practitioner, his impairment is likely to continue for two or more years. However, the ministry determined that, based on the information provided, the following criteria as set out in section 2(2)(b) of the EAPWDA were **not** met:

- The minister is satisfied that the appellant has a severe mental or physical impairment;
- In the opinion of a prescribed professional, the appellant's impairment significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- As a result of the restrictions, the appellant requires the significant help or supervision of another person to perform the DLA restricted by his impairment.

## 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 evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application, containing the following three parts:
  - The applicant information portion of the Self Report completed August 22, 2014, which consists of a separate typed page prepared by the appellant;
  - The Physician Report (PR) dated October 3, 2014 completed by the appellant's family doctor who indicated he had known the appellant since May 2013 and had seen the appellant 2-10 times in the previous year; and
  - The Assessor Report (AR) also completed by the appellant's family doctor on October 3, 2014.
2. The appellant's request for reconsideration dated January 7, 2015 to which he attached a 2-page prepared submission.

The following is a summary of the evidence from the PR and AR, as well as the appellant's submissions prepared for the reconsideration and the appeal, regarding the appellant's impairments as they relate to the three PWD criteria at issue.

### Severity of impairments (criteria set out in subs. 2(2) EAPWDA)

In the PR completed October 3, 2014, the appellant's family doctor diagnosed him with Crohn's disease onset in 1990. In his comment in the PR regarding the severity of the appellant's conditions, the appellant's doctor indicated that the appellant's history includes ileal resection surgery, followed by intermittent partial small bowel destruction; the appellant has symptoms of urgent/frequent stools typically 9-10 times day and chronic abdominal pain. The doctor indicated that the appellant is "essentially homebound." The doctor indicated that the appellant had not been prescribed medications that interfere with his ability to perform his DLA and did not require any prostheses or aids for his impairment.

In the functional skills assessment in the PR, the family doctor indicated that the appellant could walk 2-4 blocks unaided on a flat surface, that he could climb 5+ steps unaided, that he could lift 2-7 kg (5 to 15 lbs) and could remain seated 1-2 hours. The family doctor indicated that the appellant had no difficulties with communication. In the AR the family doctor indicated that the appellant's ability to communicate was satisfactory in all areas (speaking, reading, writing and hearing). The family doctor indicated in the AR that the appellant was able to independently perform all areas of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding) writing the comment "for short distances" beside walking outdoors.

In his submissions, the appellant said that his Crohn's disease causes him a great deal of abdominal pain, he has lost his teeth because of the acid reflux, and he has become anxious and depressed dealing with his Crohn's disease. He said that stress causes his symptoms to get worse and he has lost a great deal of weight. He explained that because he does not know when he will need to use the bathroom, when he leaves his house for errands or appointments, he must plan his route so that he has access to public washrooms and will only go short distances.

In the PR, the appellant's family doctor indicated "unknown" regarding whether the appellant has significant deficits with cognitive and emotional function, and in the AR, the appellant's doctor left blank the section for assessing impacts to cognitive and emotional functioning for a person with an identified mental impairment or brain injury. The family doctor indicated in the AR that the appellant is independent in all areas of social functioning, has good functioning with his immediate social network, and marginal functioning with his extended social network. At the hearing, the appellant confirmed that he does not assert he has a severe mental impairment.

Ability to perform DLA (criteria set out in subs. 2(2)(b) EAPWDA)

The appellant's family doctor left blank the section regarding his DLA in the PR because he completed the AR. In the AR, the family doctor indicated that the appellant was able to independently perform all of the listed tasks of each DLA, writing the comments "to bathroom [with] freq. urgent BM typically 9-10/day" beside the task of toileting under the DLA of personal care, and "short distances 2-3 blocks" beside the task of going to and from stores under the DLA of shopping.

In his submissions, the appellant indicated that he is able to look after his daily hygiene (although some days he lacks energy) and that he prepares his own meals, but must limit what he eats to foods that don't make his Crohn's disease worse. The appellant wrote in his self report that he is able to clean his house independently, but he usually needs to take breaks every 5-10 minutes. He won't eat if he knows he has to leave his house to run errands to reduce the chance he'll need to use the washroom when he is out of his home. When the appellant does the shopping for the family or has to run an errand, he plans his route so that he is near public washrooms and brings a change of clothing in case he has an accident. Although the appellant wrote in his self report that he does not like using public transportation, he said at the hearing that if he was designated a PWD, he could get a bus pass which would make it easier for him to get around. The appellant said he and his wife share the chores. The appellant said that due to his lack of education, the only employment he has had has been as a general labourer and because of his Crohn's disease, he is unable to maintain this employment. The appellant said that he has become anxious and agitated because of his Crohn's disease, and it has limited the social interaction he and his wife have with family and friends. At the hearing, the appellant's advocate (his mother-in-law) stated that she has seen the appellant deteriorate over the past 15 years. He cannot do simple errands because he struggles with flare ups of his condition.

Assistance required/provided (criteria set out in subs. 2(2)(b)(ii) EAPWDA)

In the section of the AR describing the assistance provided for the appellant, the appellant's family doctor indicated the appellant receives help from family and community service agencies, with the comment that the appellant "makes use of food banks."

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because he did not meet all the requirements in section 2 of the EAPWDA. Specifically, the ministry determined that it did not have enough information to establish that the appellant has a severe mental or physical impairment, that his physical or mental impairment in the opinion of a prescribed professional directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods, and, as a result of those restrictions he requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

**2** (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**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.

The following section of the *EAPWDR* applies to this appeal:

**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.

2(2) For the purpose of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner;
- (b) registered psychologist;
- (c) registered nurse or registered psychiatric nurse;
- (d) occupational therapist;
- (e) physical therapist;
- (f) social worker;
- (g) chiropractor; or
- (h) nurse practitioner.

### Existence and severity of impairments

The appellant and his advocate (who is his mother-in-law) acknowledge that the appellant can perform his DLA, although it may take him longer than normal, particularly if he is experiencing a flare up of his Crohn's disease. The appellant argues that his Crohn's disease is a severe impairment that has had a devastating effect on his daily living, his ability to work, his family and social life, because he must frequently use the washroom, experiences a great deal of pain, and his condition causes him to be anxious and depressed. The appellant argues that his Crohn's disease has made him effectively homebound and he cannot maintain employment because he has to spend so much of his time in the washroom. The appellant agreed that he did not suffer from a severe mental impairment.

In the reconsideration decision, the ministry based its determination that the appellant's impairments were not severe on the information provided by the appellant's family doctor in the PR and AR completed October 3, 2014. In the functional skills section of the PR, the family doctor notes only some restriction with walking (2-4 blocks unaided), lifting (limited to 5-15 lbs), and in the AR, the doctor indicates independence in all aspects of mobility and physical abilities. The ministry noted that the doctor did not include any additional comments to explain how the appellant's Crohn's disease impacts his functional abilities. The ministry acknowledged that the appellant's diagnoses of Crohn's disease may limit his functional abilities, and that it would be reasonable to assume a diagnosis of Crohn's disease would impact his ability to manage his DLA. However, the ministry determined that it did not have enough information from the appellant's family doctor to confirm that he has a severe physical impairment.

In terms of the appellant's mental impairment, the ministry noted the answers of the appellant's family doctor in the PR and AR that he did not have any significant deficits with cognitive and emotional functioning, and that his impairment had no impact on cognitive and emotional functioning. The ministry determined that the appellant's family doctor did not provide enough evidence to confirm that he has a severe mental impairment.

### Analysis and decision

The legislation provides that the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a) of the EAPWDA). The appellant's

family doctor confirmed in the PWD application that the appellant's impairment, Crohn's disease, is permanent and will continue for at least 2 years. The issue before this panel is whether the ministry reasonably concluded that the information provided does not confirm that the appellant has a severe physical impairment. The panel notes that the appellant does not argue that he has a severe mental impairment and does not appeal that aspect of the ministry's reconsideration decision.

In the PWD application form, the ministry has provided a definition of "impairment" which, although it is not set out in the applicable legislation, offers guidance in considering the existence and severity of an applicant's impairment. The ministry states, "impairment" is a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." To determine the severity of an impairment, there is both a cause – the impairment itself – and an effect – the degree to which it restricts the ability to function independently, effectively, appropriately or for a reasonable duration.

#### *Mental impairment*

The appellant does not assert that he has a severe mental impairment and the panel notes that the appellant's family doctor did not diagnose him with a mental impairment (the physician indicated in his answers in the PR and AR that the appellant did not have any significant deficits with cognitive and emotional functioning, and that his impairment had no impact on cognitive and emotional functioning). The panel finds that the ministry's determination that the appellant's family doctor did not provide enough evidence to confirm that he has a severe mental impairment is reasonable.

#### *Physical impairment*

In this case, the appellant's physician has diagnosed him with Crohn's disease. In the PR, the family doctor has noted the appellant has some restriction in walking (2-4 blocks unaided), lifting items heavier than 2-7 kg (5-15 lbs), and remaining seated for more than 1-2 hours. In the AR, the family doctor indicated the appellant was independent in all aspects of mobility.

The panel notes that the legislation provides that the determination of the severity of an impairment is at the discretion of the minister, taking into account all of the evidence, including that of the appellant. However, the starting point must be the medical evidence. The appellant's Crohn's disease is a serious condition for which he has had surgeries, and the options for treatment are limited. However, the panel notes that the information provided by the appellant's family doctor is that the appellant's Crohn's disease causes some restriction in his functional skills (as reported in the PR), but that he is able to function independently (as reported in the AR) and does not appear to have translated into significant restrictions to his ability to manage DLA, as discussed in more detail in the next section of these reasons for decision. The panel notes that although his Crohn's disease is serious, the appellant's submissions on appeal and at the hearing confirm that he is able to function independently. The panel finds that the ministry's determination that the information provided does not establish a severe physical impairment is reasonable.

*Direct and significant restrictions in the ability to perform DLA.*

The appellant and his mother-in-law acknowledged that the appellant is able to perform the tasks of DLA, but that he restricts his activities because of his Crohn's disease, is effectively housebound because of it and cannot find employment. The appellant relies on his mother-in-law for financial support and has become frustrated, anxious and depressed because of the effects of his Crohn's disease.

The ministry determined that the appellant's DLA are performed independently and that the information from the prescribed professional (the appellant's family doctor) does not establish that his impairment significantly restricts DLA either continuously or periodically for extended periods.

*Analysis and decision*

The legislation requires in subs. 2(2)(b) of the EAPWDA that a prescribed professional confirm that the appellant's impairments directly and significantly restrict his ability to perform his DLA continuously or periodically for extended periods. The panel notes that although a prescribed professional may indicate that, because of a restriction, an individual requires assistance either continuously or periodically for extended periods, this does not necessarily meet the legislative test of being a "direct and significant restriction." The DLA to be considered for a person with a severe physical impairment are, as set out in subs. 2(1) of the EAPWDR, as follows:

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework;
- Move about indoors and outdoors;
- Perform personal hygiene and self care;
- Manage personal medication.

In the appellant's case, his family doctor has indicated that the appellant can independently perform all of the tasks of all his DLA associated with a physical impairment, as well as all of the tasks of the DLA specifically related to persons with a mental impairment (make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively). The appellant admits that he can independently perform all of the tasks of his DLA, although if he is experiencing a flare up of his Crohn's disease, he can take longer to perform his personal hygiene and he has restricted his shopping and errands so that he is not far from a public washroom when he is out of his home. The appellant has also restricted his social activity because of his Crohn's.

The panel finds reasonable the ministry's determination that the information provided does not demonstrate a severe physical impairment that in the opinion of a prescribed professional significantly restricts the appellant's ability to perform his DLA continuously or periodically for extended periods.

Help with DLA

The appellant said that his wife helps with the housework, and the appellant's mother-in-law provides financial assistance to the couple and they will use a food bank for food. The ministry noted that the appellant's family doctor did not indicate that the appellant requires or uses any assistive devices. The ministry determined that as it had not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

The legislation requires in subs. 2(b)(iii) that in the opinion of a prescribed professional, as a result of the appellant's restrictions, the appellant requires help to perform DLA. The panel notes the evidence before the ministry was that the appellant does not require any assistive devices or the help of another person to perform his DLA and the appellant does not dispute this. The panel finds that the ministry's determination that because it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA, is reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.