

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) February 18, 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 established that the Appellant has a severe physical or mental impairment that:

- 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,
- 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 those 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 October 17, 2014.
- A physician's report completed on July 28, 2014 and an assessor's report completed on August 15, 2014. Both reports were completed by the same doctor who indicated the Appellant has been his patient for 20+ years and he had seen the Appellant once in the past 12 months.

2. Appellant's request for reconsideration dated February 6, 2015 with his statement and the 2nd page of an EKG and lab reports issued by a specialist with a fax date of October 16, 2014.

At the hearing, the Appellant said he could use assistance but he doesn't know how he will get it. He also said that he does not see his doctor very often. The Appellant stated that he was prescribed strong pain medications but they stopped working and so he stopped taking them. He also has concerns about how such medications affect his liver. The Appellant described his conditions, symptoms and how they affect his daily functioning.

The Panel finds that the Appellant's hearing testimony, including the Appellant's testimony about his medical conditions, how they impact his daily functioning and how he copes with the restrictions on his functioning was consistent with his self-reports and other evidence in the Ministry's record. Therefore, pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits the Appellant's testimony as tending to corroborate and be in support of the evidence the Ministry had at reconsideration. The Panel has summarized the Appellant's testimony as well as the evidence in the record relevant to each PWD criteria at issue below.

At the hearing, the Ministry reviewed and reaffirmed its reconsideration decision.

Diagnosis

The Appellant's doctor diagnosed the Appellant with degenerative disease lumbar spine (onset 1993). The doctor described this condition as chronic deteriorating disease of the spine. The doctor diagnosed no mental health conditions.

The specialist described that Appellant as not a well man who he suspects has not only COPD [chronic obstructive pulmonary disease], but significant coronary artery disease. The Appellant described episodes of angina, which the specialist thought probably amount to symptomatic coronary insufficiency despite the lack of temporal relationship to physical exercise.

Physical Impairment

In his self-reports and at the hearing, the Appellant described his disability as follows:

- Advanced osteoarthritis; degenerative disc disease; far lateral disc displacement which makes his leg go numb.
- Now has problems with his heart, as noted in the specialist's report, further restricting activity.
- Had an MRI in January 2015 and is waiting for an appointment with a neurosurgeon.
- Has extremely painful conditions and has seen several doctors over the last 20 years who told him the conditions cannot be fixed with surgery.
- Disabilities are totally debilitating, causing him pain with anything and everything he does;

does not walk anymore, he limps; after minimum amounts of exertion has to lie down.

- Pays close attention to pain in his back and spasms, and then stops whatever he is doing and lies down, otherwise will fall down; now is doing less and less.
- Is very careful with his movements because of how easily his back or leg will get out; at least 6-7 times a year his back is so bad he just cannot get up for as long as 2 weeks.
- Experiences pain when showering and has put his back out when washing his hair; standing and washing at the sink is very painful.
- Small movements such as turning slightly or sneezing cause pain or his back seizes up and then he cannot stand, sit or walk for days if not weeks.
- Must do everything very carefully; even so spends about 20 hours a day lying down; can sit for 1-2 hours if needs to, but this is rare and still painful; only functions for about 4 hours a day in small blocks.
- Has been advised not to lift; has put his back out lifting a cup of coffee.
- Manages to get dressed and out of bed – but takes longer; basic things like getting dressed or putting shoes on takes longer and can be very painful; can feed and bathe himself but carefully and accompanied by pain.
- Preparing food takes a long time; anything requiring standing at a counter/stove/sink is too painful and he sits down; trying to bend his knees hurts and he has to grab the counter for support; standing any length of time is too painful.
- Has been prescribed painkillers – found they are ineffective; has no trouble remembering to take them or understanding them.
- Maintaining his home takes a lot out of him; hurts to do dishes or unload the dishwasher; sweeping and washing the floor or doing laundry is always difficult and painful; does things a little bit at a time – takes much longer to complete tasks and needs several breaks.
- Shopping and going out, walking around for any length of time is painful; knee has gone out on him while standing in line at the grocery store, had to grab the counter; reaching up or down for items on shelves is very difficult and painful; can do his own shopping but only on a good day.
- Moving around generally is hard; stairs are scary – has fallen down stairs and has to be very careful with stairs; goes up and down slowly leading with one foot; finds it exhausting to just think about his next move.
- Getting up and down from a seated position is slow and can be quite painful; sometimes can't answer the phone because takes him too long to get up to get it.
- Walking on uneven surfaces is a huge problem; used to walk/hike a lot, but can't anymore; has gained weight because he cannot walk and this is an added detriment to his disability.
- Has a vehicle and manages alright while driving; has to be cautious getting in/out of his vehicle; being seated is easier – but seated for too long becomes uncomfortable.
- Disability causes him to feel frustrated, depressed and anxious.
- Quality of life has been greatly reduced because he cannot participate in anything requiring physical activities; wakes up thinking about not being able to work at his previous jobs; not being able to do activities with grandchildren; has gone on for so long with no end in sight – feels defeated if he thinks about it too much.
- Feels exhausted daily due to constantly thinking of chores and how to mitigate the pain – this is all mentally draining.
- Uses a cane sometimes at home to move between rooms; when his back goes out he crawls

because even with a cane he cannot walk then.

The doctor described the Appellant's impairment as follows:

- Most recent CT scan of the back reported no spinal stenosis yet.
- For physical functional skills: can walk unaided on a flat surface less than 1 block; can climb 2-5 stairs unaided; no lifting; can remain seated 1-2 hours.
- Appellant was referred to a neurosurgeon but is waiting for an MRI to assess if he actually may benefit from surgical interventions.
- In the assessor's report, the Appellant's inflammatory disease of the back causes some impairment.

Mental Impairment

The Appellant stated that his physical disabilities have gone on for so long with no end in sight and he feels defeated if he thinks about it too much. He also feels exhausted daily due to constantly thinking of chores and how to mitigate the pain, which is all mentally draining. The Appellant said that he discussed his mental state with his doctor but he does not want to take any pills.

The doctor reported that the Appellant has no significant deficits with and no impacts to his cognitive and emotional functioning.

Daily Living Activities

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. The doctor reported that the Appellant's impairment directly restricts his ability to manage daily living activities as follows:

- Personal self-care, meal preparation, basic housework, daily shopping, mobility inside and outside the home – all are periodically restricted – being an inflammatory disease, the symptoms may not be constantly presenting.
- Independently manages walking indoors and outdoors, climbing stairs, and carrying and holding; needs periodic assistance with standing; advised not to lift and "Try to do as little as possible".
- Independently manages all areas of personal care, basic housekeeping, shopping and meals.
- Management of medications, use of transportation, management of finances and social functioning – are not restricted; independently manages all areas of these activities.
- Good functioning with his extended social network; immediate social network – no report.

Help with Daily Living Activities

The doctor indicated that the Appellant does not require any prostheses or aids for his impairment, but uses a cane occasionally. The doctor also noted that the Appellant may need some assistance from friends and family.

The Appellant provided the following information about adaptations to his home and life:

- Sometimes uses a cane when walking.
- Has a back brace that he wears.
- Has installed grab bars in his home and has no stairs in his home.
- Has avoided being in a wheelchair but has been told that eventually will need to rely on one.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, which determined 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 will consider the parties' positions under each PWD criterion at issue in this appeal.

Severe Physical Impairment

The Appellant's position is that he has very serious medical conditions which significantly impact his ability to function. He submitted that he experiences constant pain restricting his ability to do anything. He is very careful about how he moves and walks because back pain and spasms can immobilize him for days or weeks. The Appellant stated that he spends about 20 hours a day lying down.

In its reconsideration decision, the Ministry wrote that it had considered the information from the Appellant and his doctor, but found that there were inconsistencies in the doctor's assessments. The Ministry determined that the information provided by the Appellant's doctor was not sufficient to

establish that he had 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 referred to his inability to work at his previous job. 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 the province's EAPWD legislation.

The Appellant provided many details about how the pain from his conditions directly restrict all physical activities. For example, he described how he has put his back out when washing his hair or lifting a cup of coffee. Small movements such as turning slightly cause severe pain or his back seizes up. He has been advised not to lift anything. The Appellant stated that he manages to get dressed and out of bed, but getting up, getting dressed or putting shoes on take longer and can be very painful. Preparing food takes a long time and anything requiring standing at a counter/stove/sink is too painful so that he has to sit down. The Appellant also stated that standing for any length of time or walking for any distance is too painful. At the hearing, he said that he only uses his cane occasionally and the distance he can walk outdoors unaided varies. He has to pay attention to the pain and spasms in his back or his leg. If these symptoms start, he stops whatever he is doing otherwise he will fall or be unable to stand, sit or walk for days if not weeks. As a result, he does very little anymore.

As for the evidence from the Appellant's doctor, the Panel notes that although the Appellant has been a patient for more than 20 years, the doctor indicated he had only seen the Appellant once in the 12 months preceding the July 2014 physician's report. Also, this doctor completed both the physician's report and assessor's report about 6 months before the Ministry made its reconsideration decision. Although the doctor did not provide recent assessments about the Appellant's circumstances, that doctor's medical opinions must be considered in determining whether the Ministry's findings for this PWD requirement were reasonable.

The Appellant's doctor diagnosed the Appellant with chronic degenerative disease of the spine. This doctor did not refer to any cardio-pulmonary conditions or indicate any impairments from such conditions, even though there were references to such conditions by the specialist. As for the Appellant's physical and mobility abilities, the doctor reported that the Appellant can walk unaided on a flat surface less than 1 block, can climb 2-5 stairs unaided, should not lift anything and can remain seated for 1-2 hours. The doctor also noted that the Appellant experiences periodic restrictions with personal self-care, meal preparation, basic housework, daily shopping and mobility inside/outside the home. However, the only explanation by the doctor about these periodic restrictions was that because the Appellant's condition is an inflammatory disease, the symptoms may not be constantly presenting. Also, although the doctor noted that the Appellant may need some assistance from

family and friends, the doctor reported that the Appellant independently manages all physical activities such as walking indoors/outdoors, all areas of personal care, of basic housekeeping, shopping and meals.

The Panel recognizes that the Appellant experiences many direct restrictions to his physical functioning arising from his conditions. However, when all of the evidence is considered, the Panel finds that the Ministry reasonably determined that the information provided was not sufficient to establish that the Appellant has a severe physical impairment for purposes of PWD designation.

Severe Mental Impairment

The Appellant submitted that because of his physical disabilities he feels defeated and exhausted, and thinking about his situation is mentally draining. The Appellant said that he discussed his mental state with his doctor but he does not want to take any pills.

The Ministry determined that the information provided did not establish that the Appellant has a mental impairment.

The Panel's Findings

Although the Appellant submitted that his mental state is affected by his physical disabilities, the doctor did not diagnose that Appellant with any mental health conditions or impairments or report any restrictions to activities requiring cognitive abilities. Also, the doctor indicated that the Appellant has no significant deficits with and no impacts to his cognitive and emotional functioning. He does not require any support/supervision with social functioning. Therefore, based on this evidence, the Panel finds that the Ministry reasonably determined that the information provided did not establish that the Appellant has a mental impairment.

Restrictions to Daily Living Activities

The Appellant described how virtually every daily task and activity is directly restricted by the pain he experiences. He submitted that he limits or avoids activities to minimize increased pain and spasms in his back and leg, and to avoid being laid up for long periods of time.

The Ministry wrote that it relies on the medical opinion and expertise of the Appellant's doctor to determine if the Appellant's impairment significantly restricts his ability to perform daily living activities. The Ministry acknowledged that the Appellant experiences periodic restrictions; however, based on the information provided by the Appellant's doctor, the Ministry determined that the information from the doctor did not establish that a severe impairment significantly restricts the Appellant's daily living activities continuously or periodically for extended periods.

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. It is not enough, however, for the prescribed professional to merely report that such activities are restricted. The prescribed professional must assess and describe the degree of restriction and the extent of assistance needed to manage the daily living activities defined in section 2(1) of the EAPWDR. The physician's and assessor's reports specifically address these legislated requirements.

In this case, the Appellant's doctor completed the physician's and assessor's report and is therefore the prescribed professional. In the physician's report, the doctor noted that the Appellant experiences periodic restrictions with personal self-care, meal preparation, basic housework, daily shopping and mobility. He likely needs some assistance from friends and family. The doctor explained that the Appellant's medical condition is an inflammatory disease so the symptoms may not be constantly presenting. However, in the assessor's report, the doctor noted that the Appellant independently manages all of these same activities, as well as independently managing finances and medications, the use of transportation and all areas of social functioning. Therefore, the Panel finds that the Ministry reasonably determined that the information from the Appellant's doctor did not establish that a severe impairment directly and significantly restricts the Appellant's daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted that he needs assistance, but does not know how to get it. Family and friends help sometimes. Also he indicated that he has made adjustments at home to help with his mobility.

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 that the Appellant does not need any prosthesis or aids for his impairment, but then also indicated that the Appellant uses a cane occasionally. As for other help, the doctor indicated that family and friends help the Appellant as needed with no other explanations about the type of help. The doctor also did not confirm the information from the Appellant about the aids in his home. Therefore, based on this information from the doctor 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 met.

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.