

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 4, 2015 which found that the appellant did not meet four of the five 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. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's impairment is likely to continue for at least two years;
- the appellant has a severe physical or 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 evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated April 10, 2015, a physician report (PR) and an assessor report (AR) both dated April 11, 2015 and completed by a general practitioner who has known the appellant for 1 month. The general practitioner indicated that he relied on only one information source to complete the AR, specifically an office interview with the appellant.

The evidence also included:

- 1) Notice of appointment for cystoscopy on December 4, 2014;
- 2) Note dated July 6, 2015 from the general practitioner;
- 3) Letter dated July 7, 2015 from the general practitioner; and,
- 4) Request for Reconsideration dated July 19, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with CAD [coronary artery disease] with an onset in 2007, CABS [coronary artery bypass surgery] in September 2014, DDD [degenerative disc disease] neck- possible radiculopathy with an onset in 2014, and memory problems NYD [not yet determined] with an onset in 2007. In the AR, asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner left this section incomplete.

Duration

In the PR, regarding the degree and course of the impairment, the general practitioner did not indicate a response to the question whether the appellant's impairment is likely to continue for two years or more. The general practitioner wrote: "need further investigation about memory before (illegible)."

Physical Impairment

In the PR and AR, the general practitioner reported that:

- In terms of health history, the appellant has CAD with CABS in September 2014. He has "CP [chest pain] on climbing stairs...lately complains of neck pain radiating to left arm, possible lumbar radiculopathy, unable to sleep and cannot do anything as feel dizzy sometimes. Recent heart surgery- still have chest pains on exertion."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided, he can climb 5 or more steps unaided, he can lift 2 to 7 kg. (5 to 15 lbs.) with a note: "pain in neck (illegible)" and there is no limitation with how long he can remain seated.
- The appellant is restricted with mobility inside or outside the home; however, the general practitioner does not indicated whether the restrictions are continuous or periodic.
- In the additional comments to the PR, the general practitioner wrote that the appellant had "recent CABS- chest pain on exertion- need further evaluation; left arm with numbness, possible radiculopathy, limits activities."
- The appellant is assessed as independent with walking indoors and walking outdoors (note is illegible), takes significantly longer than typical with climbing stairs (note: "on 6 stair has to sit"), and requires periodic assistance for lifting (note: "certain tasks") and there is no assessment provided for standing or for carrying and holding. The general practitioner wrote: "laundry done

by cousin's wife; cooking small meals OK, but big meals can't cook; housekeeping- cousin's wife."

In his self-report, the appellant wrote:

- He had "open heart surgery" and most of the time he feels weakness and dizzy.
- He has back pain that extends to his left hand. The pain "becomes like numbness in the left arm."
- He has difficulties breathing and has dizziness and weakness.
- He also gets some mild chest pains when he lifts "heavy things more than 5 lbs." and when he goes up stairs.
- If he stands or walks for more than 15 minutes, he tends to get dizzy which makes his eyesight blurry.

In the Request for Reconsideration, the appellant wrote that:

- Climbing 5 steps is always accompanied by rest for at least 5 seconds after every 2 steps.
- Regarding his ability to walk 5 blocks, he did not know how far was meant by a "block" and it is always accompanied by 10 to 20 seconds of rest before he can continue.
- As for his ability to carry 15 lbs., this does not mean that he can carry 15 lbs. and walk with it, but he can carry it for a second or two, then he puts it on the ground.

In the letter dated July 7, 2015, the general practitioner wrote that the appellant mentioned that his walking is restricted to less than one block and he has to hold rails to climb 4 to 5 steps.

Mental Impairment

In the PR and AR, the general practitioner reported:

- In terms of health history, the appellant "mentioned that has/had memory issues, has to check multiple times to do some tasks; forgets often appointment times."
- The appellant does not have difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in 2 of the 11 listed areas, specifically: executive and memory, with comments added: "forgetting multiple tasks, unable to make up appointments, fatigue, on and off anxiety issues."
- The appellant is restricted with social functioning; however, the general practitioner does not indicate whether the restrictions are continuous or periodic. The general practitioner wrote: "poor sleep impairs social functioning."
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- There are major impacts to the appellant's cognitive and emotional functioning in the areas of bodily functions, insight and judgment, attention/concentration, and memory. There are moderate impacts in the areas of consciousness, executive, and other neuropsychological problems. There are minimal or no impacts assessed for the remaining 4 areas of functioning. The general practitioner wrote that "...due to memory issues, unable to learn new things, forgetting names, telephone numbers, needs to keep diary to recall things; lacking sleep further aggravating symptoms; pain in left arm impacting sleep."
- With respect to social functioning, the appellant is independent in the areas of interacting appropriately with others and securing assistance from others. No assessment is made in the other 3 areas, although the general practitioner noted "lack of sleep interferes with relations" with respect to the appellant ability to develop and maintain relationships and "unknown"

regarding his ability to deal appropriately with unexpected demands.

- The appellant has marginal functioning in both his immediate and extending social networks and the general practitioner noted “receives assistance” with his extended social networks.
- Asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner left this section incomplete.

In his self-report, the appellant wrote:

- He has memory loss sometimes and difficulties staying on track.
- He tends to forget the simplest of things, like his phone numbers, home address and even sometimes he forgets if he has taken his daily medications.

In the letter dated July 7, 2015, the general practitioner wrote that the appellant’s social life is restricted due to language barrier/anxiety.

Daily Living Activities (DLA)

In the PR and AR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- The appellant is not restricted with the DLA management of medications, although the general practitioner also indicated “periodic” for the extent of restriction.
- There was no assessment for the DLA management of finances.
- The appellant is restricted on a periodic basis with meal preparation (note: “cousin’s wife”) and basic housework. The general practitioner noted that the appellant’s “left arm pain interferes with housekeeping; cousin’s wife helps (illegible).”
- The appellant has undefined restrictions with the DLA personal self care, daily shopping, mobility inside and outside the home, use of transportation and social functioning.” The general practitioner noted that “poor sleep impacts social functioning.”
- The degree of restriction is not described by the general practitioner.
- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent with all of the tasks of several listed DLA, including paying rent and bills, medications and transportation. The general practitioner did not provide an assessment regarding the task of using transit schedules and arranging transportation but wrote: “(illegible) requires assistance.”
- For the personal care DLA, the appellant is independent with the tasks of dressing, grooming, toileting feeding self and regulation diet. There is no assessment provided for the tasks of bathing and transfers on/off of chair and the appellant is assessed as independent and using an assistive device for transfers in/out of bed. The general practitioner noted: “(illegible) left arm pain.”
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with both housekeeping and laundry and his “cousin’s wife helps due to left arm and chest pain.”
- For the shopping DLA, the appellant is independent with the task of paying for purchases, and he requires periodic assistance with making appropriate choices and continuous assistance with going to and from stores [note: “friends help with (illegible)”) and carrying purchases home [note: “cannot carry (illegible)”). There was no assessment provided for reading prices and labels.
- Regarding the meals DLA, the appellant is independent with the tasks of meal planning and

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safe storage of food, is independent and requires periodic assistance with food preparation (note: “independent with small meals”), and requires periodic assistance with cooking.

In his self-report, the appellant wrote that when he cannot find a place to sit on the bus, he is forced to stand and hold himself by his hands and then he feels pain and numbness in his hands.

In the Note dated July 6, 2015, the general practitioner wrote that the appellant “currently cannot work due to medical reasons, until further notice”;

In the letter dated July 7, 2015, the general practitioner wrote:

- The appellant mentioned that he tried to do various jobs and was unable to perform it due to the mentioned disabilities.

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, it is provided by his family and friends. In the section of the AR for indicating the assistance provided through the use of assistive devices, the general practitioner identified bathing aids and wrote: “due to left arm pain.”

Appellant’s additional information

In his Notice of Appeal dated August 11, 2015, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that it is not reasonably based on the evidence.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated September 18, 2015 from the general practitioner that is identical to the letter from the general practitioner dated July 7, 2015;
- 2) Letter dated October 5, 2015 from the advocate to the general practitioner enclosing a statement regarding duration and requesting that the statement be returned to her;
- 3) The enclosed statement that sets out the appellant’s diagnoses as in the PR and asks if the impairment is likely to continue for two years or more from today; and,
- 4) The statement regarding duration which includes a check in the “yes” box but no signature. The advocate pointed out that the medical clinic fax number appears across the top of the document; and,
- 5) The statement regarding duration which includes a check in the “yes” box with the stamp of the general practitioner affixed and a signature and date of October 6, 2015.

At the hearing, the appellant and his advocate stated:

- The difficulty that the advocate has experienced in her interactions with the general practitioner, with the requested statement only being provided on the date of the hearing, demonstrate difficulties with communication as the appellant has described and she does not have the same language barriers as the appellant.
- The appellant’s major disability currently is his chest pain and memory loss, especially his short term memory. He can remember events from 20 years ago but not events that occurred a few minutes ago.
- He has pain, especially at night when he is sleeping, from his head through his arm into his leg, or the whole left side of his body. It starts as numbness and grows into pain.
- When he told his doctor about his memory issues, the doctor said that this is what happens to a person when they live alone. The doctor has said she will refer him to a specialist but he

has not yet been given an appointment.

- The doctor sent him for a CT scan and when he met with the doctor she said that he has a “small problem” in his brain. The doctor said it may be affecting the numbness in his arm.
- He asks his cousins and friends to help him with his daily activities but they are starting to get tired of it and say they have other things to do. He has extreme difficulty without their help.
- When the doctor asked him about lifting, there was a language barrier and there was misunderstanding. He said he could only lift 5 lbs. and the doctor reported 5 to 15 lbs. Even carrying 5 lbs, he finds this difficult and has to put it down and rest.
- When asked how far he can walk, he considered a “block” to be like in his country of origin, which is much smaller than the blocks in his community.
- His previous family doctor was required to refer him to the doctor who completed the PWD application because she had to take on new refugee patients. He had only known this doctor for 1 month and saw the doctor two times.
- He has told the new doctor about his chest pain and asked about a referral to a specialist but the doctor told him to go the emergency department at the hospital. He has gone to the hospital and they take his blood pressure and run an ECG test and send him home. He feels that another test needs to be conducted such as a stress test, where something shows up.
- Asked how often and how long he receives help from his friends and his cousin’s wife, the appellant stated that he cannot remember. Whenever he asks for help, they come to help. Sometimes this is 1 to 2 times per week, depending on the task at hand. If he has laundry to do and cooking and doing dishes, it can take them a long time. If there is no laundry or cooking, it may take only a little time.

The ministry relied on its reconsideration decision as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the additional documents provided by the appellant at the hearing. The panel considered the testimony by the appellant as well as the additional letters and statement as additional information that corroborates the extent of the appellant’s impairment from the previously diagnosed conditions and the quality of interactions with the general practitioner, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

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 does not have a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry also found that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that 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 person with disabilities (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.

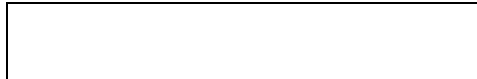
- (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that
- (a) in the opinion of a medical practitioner is likely to continue for at 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) and (2) of the EAPWDR provide definitions of DLA and prescribed professionals 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.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

Duration

The appellant's position is that his doctor clarified in the statement provided at the hearing that his impairments will continue for 2 years or more.

The ministry's position is that the appellant's general practitioner had not confirmed in the PR that the appellant's impairment will continue for two years or more.

Panel Decision

Section 2(2)(a) of the EAPWDR requires that there must be the opinion of a medical practitioner indicating that the appellant's impairment is likely to continue for at least two years. In response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the general practitioner did not indicate either "yes" or "no" and wrote: "need further investigation about memory before (illegible)." At the hearing, the appellant provided a statement regarding duration which includes a check in the "yes" box with the stamp of the general practitioner affixed and a signature and date of October 6, 2015. As the general practitioner wrote in the PR that further investigation was required "about memory" before an assessment is made and the appellant stated at the hearing that there have been no further investigations since he has not yet had an appointment with a specialist, without an explanation for the change in the general practitioner's assessment, the panel finds that little weight is assigned to the statement regarding the diagnosis of "memory

problems.” However, the other diagnoses in the PR are also set out in the statement, specifically CAD [coronary artery disease] and CABS [coronary artery bypass surgery], and DDD [degenerative disc disease], and the general practitioner had not previously provided a qualification for further investigation regarding these conditions. With the general practitioner’s stamp and signature on the statement provided at the hearing, the panel finds that the ministry’s determination that the medical practitioner had not confirmed that the appellant’s impairment will continue for two or more years from the date of the application was not reasonable.

Severe Physical Impairment

The appellant’s position is that he has a severe physical impairment as a result of chest pains, CAD and CABS accompanied by weakness and dizziness, pain due to DDD, and numbness as a result of a problem in his brain discovered on a recent CT scan. The appellant argued that there were language barriers that impacted the doctor’s assessment and that he cannot walk 4 or more blocks unaided without resting, he must rest after climbing about 2 steps and he can only lift 5 lbs. with difficulty.

The ministry’s position is that there is not sufficient evidence from the general practitioner to demonstrate a severe physical impairment. The ministry argued that the general practitioner indicated that the appellant is able to walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 5 to 15 lbs. and there is no limitation on how long he can remain seated. The ministry argued that while the appellant experiences limitations to his physical functioning due to CAD, chest pain and DDD, the assessments provided by the medical practitioner speak to a moderate rather than a severe physical impairment.

Panel Decision

A diagnosis of a serious medical condition 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 the ministry 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 the ability to perform 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 appellant’s general practitioner.

The general practitioner diagnosed the appellant with CAD with an onset in 2007, coronary artery bypass surgery in September 2014, and DDD in his neck with possible radiculopathy with an onset in 2014. While the appellant stated at the hearing that his doctor reviewed the results of a recent CT scan and told him that there is a problem with his brain, no further information was provided by the general practitioner regarding a further diagnosis. The general practitioner wrote that the appellant has chest pain on climbing stairs and “on exertion” and “lately complains of neck pain radiating to left arm, possible lumbar radiculopathy, unable to sleep and cannot do anything as feel dizzy sometimes.” In the additional comments to the PR, the general practitioner wrote that the appellant had “recent CABS- chest pain on exertion- need further evaluation; left arm with numbness, possible radiculopathy, limits activities.” At the hearing, the appellant stated that the general practitioner would not refer him to a specialist for further investigation of his chest pains and told him to go to the hospital. He stated that when he has gone to the hospital he has been released after tests are

conducted and no problem is detected. There were no further reports provided on the appeal regarding the appellant's neck pain or "possible" radiculopathy or regarding the current condition of his heart.

The general practitioner reported that the appellant does not require an aid for his impairment. In terms of functional skills, the general practitioner indicated that the appellant can walk 4 or more blocks unaided, he can climb 5 or more steps unaided, he can lift 5 to 15 lbs., with a note: "pain in neck (illegible)," and there is no limitation with how long he can remain seated. In his Request for Reconsideration, the appellant wrote that climbing 5 steps is always accompanied by rest for at least 5 seconds after every 2 steps, that walking 5 blocks is always accompanied by 10 to 20 seconds of rest before he can continue, and he can carry 15 lbs. for a second or two, then he puts it on the ground. At the hearing, the appellant stated that he can only lift 5 lbs. with difficulty. In the letter dated July 7, 2015, the general practitioner wrote that the appellant mentioned that his walking is restricted to less than one block and he has to hold rails to climb 4 to 5 steps.

In the PR, the general practitioner reported that the appellant is restricted with mobility inside or outside the home; however, the general practitioner does not indicated whether the restrictions are continuous or periodic. In the AR, the appellant is assessed by the general practitioner as independent with walking indoors and walking outdoors (the note is illegible), takes significantly longer than typical with climbing stairs (note: "on 6 stair has to sit"), and requires periodic assistance for lifting (note: "certain tasks") and there is no assessment provided for standing or for carrying and holding. The panel finds that while the appellant's evidence regarding his mobility and physical ability varies, the consistent evidence of the general practitioner is that the appellant can walk 4 or more blocks independently, he can climb 5 or more steps and rests at the 6th, and he can lift 5 to 15 lbs. with pain in his neck. Given the absence of an assessment of significant impacts to the appellant's physical functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that he has a severe mental impairment due to his short term memory problems.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment as required by Section 2(2) of the EAPWDA. The ministry argued that the appellant's contact with the general practitioner has been very limited, with little opportunity to develop an opinion based on a history of contact, experience, and observations and the general practitioner has not provided a mental health diagnosis.

Panel Decision

In the PR, the general practitioner reported that the appellant has memory problems not yet determined, with an onset in 2007, and wrote regarding the degree and course of impairment: "need further investigation about memory before (illegible)." The appellant stated at the hearing that there have been no further investigations since he has not yet had an appointment with a specialist. The general practitioner wrote in the PR that the appellant "mentioned that has/had memory issues, has to check multiple times to do some tasks; forgets often appointment times." The general practitioner reported that the appellant has significant deficits with cognitive and emotional function in 2 of the 11 listed areas, specifically: executive and memory, with comments added: "forgetting multiple tasks,

unable to make up appointments, fatigue, on and off anxiety issues.”

There are major impacts assessed to the appellant’s cognitive and emotional functioning in the areas of bodily functions, insight and judgment, attention/concentration, and memory, and there are moderate impacts in the areas of consciousness, executive, and other neuropsychological problems. The general practitioner wrote that “...due to memory issues, unable to learn new things, forgetting names, telephone numbers, needs to keep diary to recall things; lacking sleep further aggravating symptoms; pain in left arm impacting sleep.” This section of the AR is designed for those with an identified mental impairment or brain injury, and the panel finds that the general practitioner wrote regarding the appellant’s memory problems that further investigation was required before the degree and course of impairment could be confirmed and impacts due to physical impairment, such as pain in his arm, are not as a result of a mental health condition. Given the absence of a definitive mental health diagnosis or further investigations as reported to be required by the general practitioner, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant’s position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis such that he requires the significant assistance of another person, specifically his family and friends.

The ministry’s position is that the information from the prescribed professional does not establish that the appellant’s impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that although the general practitioner assessed the appellant as requiring continuous assistance in tasks of the DLA housekeeping and shopping and periodic assistance with tasks of the meals DLA, the appellant has been assessed as independent with the majority of the other tasks of DLA. The ministry argued that the assessments provided by the medical practitioner are indicative of a moderate level of restriction.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant’s severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant’s impairments continuously or periodically for extended periods.

In the appellant’s circumstances, the general practitioner reported that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA. The general practitioner reported in the PR that the appellant is not restricted with the DLA management of medications, although the general practitioner also indicated “periodic” for the extent of restriction, and there was no assessment provided for the DLA management of finances. In the AR, the general practitioner reported that the appellant is independent with all of the tasks of the DLA “paying rent and bills,” including banking and budgeting, and the tasks of the DLA medications, specifically: filling/refilling prescriptions, taking as directed, and safe handling and storage. Although the appellant wrote in his self-report, that he has memory loss and even sometimes he forgets if he has taken his daily medications, this has not been confirmed by the general practitioner as the prescribed

professional.

In the PR, the general practitioner indicated that the appellant is restricted on a periodic basis with meal preparation and basic housework as the appellant's "left arm pain interferes with housekeeping; cousin's wife helps (illegible)." In the AR, the general practitioner reported that the appellant is independent with the tasks of meal planning and safe storage of food, and is independent and requires periodic assistance with food preparation (note: "independent with small meals"), and requires periodic assistance with cooking. Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with both housekeeping and laundry and his "cousin's wife helps due to left arm and chest pain." Asked at the hearing how often and how long he receives help from his friends and his cousin's wife, the appellant stated that it varies, that essentially whenever he asks for help, they come to help. Sometimes this is 1 to 2 times per week, depending on the task at hand. If he has laundry to do and cooking and doing dishes, for example, it can take them a long time. If there is no laundry or cooking, it may take only a little time.

Although the general practitioner reported in the PR that the appellant is restricted with the DLA personal self care, daily shopping, mobility inside and outside the home, use of transportation and social functioning, the general practitioner did not indicate whether the restrictions are continuous or periodic. The degree of restriction is not described by the general practitioner. In the AR, the general practitioner indicated that the appellant is independent with most tasks of the personal care DLA, specifically: the tasks of dressing, grooming, toileting feeding self and regulation diet. There is no assessment provided for the tasks of bathing and transfers on/off of chair and the appellant is assessed as independent and using an assistive device for transfers in/out of bed. The general practitioner noted: "(illegible) left arm pain" but did not describe the assistive device used.

For the shopping DLA, the appellant is independent with the task of paying for purchases, and he requires periodic assistance with making appropriate choices and continuous assistance with going to and from stores [note: "friends help with (illegible)"] and carrying purchases home [note: "cannot carry (illegible)"]. There was no assessment provided for reading prices and labels. In the AR, the appellant is reported as independent with moving about indoors and outdoors and with use of transportation. The general practitioner did not provide an assessment regarding the task of using transit schedules and arranging transportation but wrote: "(illegible) requires assistance." In his self-report, the appellant wrote that when he cannot find a place to sit on the bus, he is forced to stand and hold himself by his hands and then he feels pain and numbness in his hands. Many of the narrative references by the general practitioner are not legible and those that are do not describe or explain the duration or frequency of the periodic assistance required with some tasks of DLA, and several tasks are not assessed. The general practitioner does not explain the need for continuous assistance with the tasks of the DLA basic housekeeping and shopping, when seen in conjunction with the appellant's functional skills assessment of walking 4 or more blocks independently, climbing 5 or more steps and resting at the 6th, and lifting 5 to 15 lbs. with pain in his neck.

In the note dated July 6, 2015, the general practitioner wrote that the appellant "currently cannot work due to medical reasons, until further notice" and, in the July 7, 2015 letter, the general practitioner wrote that the appellant mentioned that he tried to do various jobs and was unable to perform it due to the mentioned disabilities. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the lack of detail regarding the extent of restrictions to the tasks of DLA or the degree of assistance required, and the emphasis by the general practitioner on employability, the panel finds that the ministry was reasonable to conclude that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that his physical and mental impairments significantly restrict his daily living functions such that significant assistance is required.

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. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, it is provided by his family and friends. In the section of the AR for indicating the assistance provided through the use of assistive devices, the general practitioner identified bathing aids and wrote: "due to left arm pain." At the hearing, the appellant stated that he asks his cousins and friends to help him with his daily activities but they are starting to get tired of it and say they have other things to do. The appellant stated that he has extreme difficulty without their help.

The panel finds 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 since the evidence to not satisfy all of the criteria in Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision.