

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated November 5, 2015 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the appellant had a severe mental or physical impairment,
- that the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted daily living activities (DLA) either continuously or periodically for extended periods, and
- that as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

PART D – Relevant Legislation

The relevant legislation is section 2 of the EAPWDA and section 2 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of a physician's report (PR), an assessor's report (AR) both dated June 9, 2015, and completed by the appellant's physician who has known the appellant for 5 years and seen him 2-10 times, a self report (SR) dated June 3, 2015 and a hand written statement from the appellant dated October 30, 2015 that was submitted at reconsideration.

The PR indicates that the appellant has been diagnosed with degenerative disc disease with bulging discs (onset 2011), OA of knees (onset 2013) and Acute MI (onset January 2015). Health history indicates severe back and neck pain due to degenerative disc disease and multiple MVAs, had surgery on neck and recent MI. The appellant has not been prescribed with any medication or treatment that would interfere with DLAs and does not require a prosthesis. The physician states that the impairment is likely to continue for more than two years. The appellant can walk 2-4 blocks, cannot climb stairs without pain, has no limitations on lifting, can remain seated for 1-2 hours, and has significant cognitive deficits in the areas of emotional disturbance, motivation and attention or sustained concentration with chronic pain causing depressed mood.

The AR indicates that the appellant suffers from severe chronic pain and depressed mood and anxiety. His ability to communicate is good. His mobility is independent when walking indoors, standing and lifting, but he requires periodic help when walking outdoors or carry and holding and continuous assistance to climb stairs (which assistance the AR describes as "uses rails"). The appellant's cognitive and emotional functioning does not impact his daily functioning in most areas except bodily functions, attention/concentration, memory and motivation, which have a moderate impact and emotion (anxiety, depression) which has a major impact. In terms of DLAs, the appellant is independent in the vast majority save for laundry and basic housekeeping, carrying purchases home, developing and maintaining relationships. He has marginal functioning in relationships with both his immediate and extended social networks. The appellant receives assistance from friends and uses a cane.

In his SR the appellant indicates that he requires help to complete the form. He states: "I have continual back and knee pain. I lose feeling in my right knee after walking for ten minutes, even with a knee brace and cane. I recently had a heart attack which seems to increase my other already existing problems. I have [a person] who comes once a week to do laundry and house cleaning. Both she and [another person] are available to child care when I need a break. I am not going to improve. When asked how his disability affects his life, the appellant writes: "health wise probably will need more help in the future."

In his reconsideration submission the appellant indicates that he has had two more heart episodes requiring overnight hospital stays; that his pain levels have increased requiring him to use his neck and knee braces and use his cane for day-to-day chores. He is having to rely on others more and is looking into respite care due to increased pain, stress, depression and anxiety.

The appellant repeated his concerns raised in the reconsideration decision in his written appeal submission.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria of section 2 of the EAPWDA for designation as a PWD was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry was not satisfied that:

- the appellant had a severe mental or physical impairment,
- the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted DLAs either continuously or periodically for extended periods, and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLAs.

The ministry determined that the age requirement and that her impairment was likely to continue for at least 2 years had been met.

The criteria for being designated as a person with disabilities are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR. Section 2 of the EAPWDA states:

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;

"health professional" repealed

"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

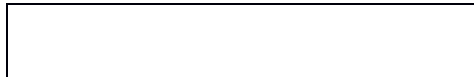
(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2 of the EAPWDR provides further clarification:

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.

Neither the appellant nor the ministry representative attended the hearing. The panel confirmed that the appellant and the ministry had been served notice of the hearing in accordance with section 86(b) of the *Employment and Assistance Regulation*.

Severe Physical and Mental Impairment

The reports and statements before the ministry indicate that the appellant suffers from chronic pain due to degeneration in his neck and back and right knee. This pain has implications for both his physical and mental functioning. Physically there are some restrictions on his ability to walk and climb stairs and remain seated. Mentally, the appellant suffers from depression and anxiety. The appellant has also suffered a number of heart incidents requiring hospitalization. While acknowledging these issues, the AR clearly indicates that the appellant's ability to communicate is good, that he is in the main independent in his mobility and physical ability and that, other than his issues with anxiety and depression, the appellant's cognitive and emotional functioning is not impacted, or only moderately impacted, by his impairments. The SR confirms these observations. Finally, the appellant states that he is having further heart issues but it is not clear what those are or what their impact is.

Based on this analysis the panel considers that the ministry's decision that the appellant's physical and mental impairment is not severe was reasonable.

Daily Living Activities

The PR does not deal with DLAs as the physician refers to the AR. The AR indicates that the appellant is independent in all listed DLAs except laundry, basic housekeeping, carrying purchases home and developing and maintaining relationships. In terms of personal care, shopping (other than carrying home), meals, bills, medications, transportation and social functioning (other than relationships) the appellant is independent. In his self report and statements at reconsideration and appeal, the appellant states that he requires a neck and knee brace to carry out day-to-day chores and also that he requires and receives assistance for laundry and housekeeping. He states that his condition is worsening, both physically in terms of the pain and mentally due to increased anxiety and depression, so that he will need more assistance to complete DLAs in the future. This information, however, is not in contradiction to that in the AR which identifies these areas as requiring assistance.

The panel finds that, based on the AR indicating that the appellant is independent in almost all DLAs, the ministry was reasonable to find that the appellant's impairments do not directly and significantly impact his ability to carry out DLAs either continuously or periodically for extended periods.

Help is Required to Perform DLAs

The legislative requirement is that the appellant require help as a direct result of the restrictions on performing DLAs caused by a severe physical or mental impairment. As the panel has found that the ministry was reasonable in finding that the appellant does not suffer from a severe physical or mental impairment that restricts his ability to carry out DLAs, this criterion is not applicable.

The panel finds that as the ministry was reasonable in its determination that this criterion is not applicable.

Conclusion

The panel finds that the ministry's decisions that:

1. the appellant does not have a severe physical or mental impairment;
 2. the appellant's impairment does not directly and significantly restricts DLAs, and
 3. the appellant does not require assistance with DLAs
- were reasonable.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for PWD was reasonable based on the evidence before it, and confirms the ministry's decision.