

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated May 10, 2016 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age and that his impairment is likely to continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the minister was not satisfied that:

- the appellant has a severe mental or physical impairment; and
- the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- as a result of these restrictions, the appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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

Information before the minister at reconsideration included:

1. A PWD application is comprised of the Applicant Information and Self-report signed by the appellant on October 24, 2015, as well as a Physician Report (“PR”) dated October 13 2015 and Assessor Report (“AR”) dated October 13, 2015 both completed by a general practitioner (“the physician”). In the PR, the physician indicated the appellant has been his patient since September, 2013 and reported that he has seen the appellant 2 to 10 times in the past 12 months. In the AR, the physician indicated he completed the form as his family doctor.

The PWD application included the following information:

Diagnoses

PR

In the PR, the Appellant was diagnosed with ankylosing spondylitis and anxiety/depression, onset 2013. Under Health History, the ankylosing spondylitis is described as difficulty walking/lifting due to pain in back. Also knee pain affects functioning. Anxiety – social interactions difficult, also has multiple chemical sensitivities.

Self-report

The Appellant described his ankylosing spondylitis as particularly severe. He wrote that it escalated in January, 2013, causing inflammation in his left foot, left knee and right sacroiliac joint as well as years of untreated spinal inflammation.

The Appellant submitted an attachment to his PWD application dated October 22, 2013, in which he added details of the effects of his ankylosing spondylitis, anxiety and depression which are included in the self-report sections below.

Functional Skills

PR

The physician provided the following information regarding any functional limitations:

- The Appellant can walk 4+ blocks unaided on a flat surface;
- Climb 5+ stairs;
- Remain seated 2 to 3 hours, with the comment “but experiences pain” for all three of these functional skills;
- Can lift 5 to 15 pounds;
- Has no difficulties with communication ;
- Has significant deficits with cognitive and emotional function in the areas of Memory, Emotional disturbance, Motivation and Motor activity, with the comment “believes short term memory is affected by chemical sensitivity and agitation”.

AR

The physician provided the following information for Mental or Physical Impairment (Abilities):

- Ability to Communicate: Speaking, Reading, Writing and Hearing are good, with the comment “can be affected by chemical sensitivity”.
- Mobility and Physical Ability: The Appellant uses an assistive device (cane) for walking outdoors and

requires periodic assistance from another person with lifting, with the comment "difficulty lifting larger than 15 lbs". Walking indoors, climbing stairs, standing and carrying and holding are reported to be managed independently.

The physician reported the following impacts for the 14 areas of Cognitive and Emotional Functioning:

- No impact in 6 areas: Consciousness, Impulse control, Executive, Language, Psychotic symptoms and Other neuropsychological problems.
- Minimal impact in 6 areas: Bodily functions, Insight and judgement, Attention/concentration, Memory, Motivation and Motor activity.
- Moderate impact in one area: Other emotional or mental problems.
- Major impact in one area: Emotion.
- Comments: "Isolates; difficult interactions with others; +/- cognitive impairment reported [during?] exposure to chemicals".

Self-report

The Appellant reported that he has anxiety and depression related to his symptoms and an undiagnosed chemical sensitivity. His anxiety and depression causes a lack of motivation and fatigue. He wrote that his multiple chemical sensitivities cause dizziness, headache, lightheadedness, fatigue and many other symptoms including memory loss, anxiety and cognitive impairment. He wrote that he has variably limited mobility and often uses a cane to walk and support himself when standing up or sitting down, even on good days there is pain when walking, standing and sitting and his lifting capacity is limited to 15 pounds. In the addendum to his PWD application, the Appellant wrote that his back hurts all the time, he doesn't sleep due to pain, he cannot stand longer than 20 minutes, does not cook, does not shower, does not shave, does not go out, does not have energy.

Daily Living Activities (DLA's)

PR

The physician checked *No*, the Appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA's.

AR

The physician provided the following information:

Personal Care

- Dressing, Grooming, Toileting, Transfers (in/out of bed) and Transfers (on/off of chair) reported to be performed independently.
- Bathing, Feeding self and Regulate diet reported to take significantly longer than typical, with the comment * "Due to pain, easily fatigued. 25 – 50% longer than expected".

Basic Housekeeping

- Laundry and basic housekeeping reported to take significantly longer than typical, with an asterisk.

Shopping

- Going to and from stores reported to take significantly longer than typical, with an asterisk.
- Reading prices and labels, Making appropriate choices and Paying for purchases reported to be performed independently.

- Carrying purchases home reported to require periodic assistance from another person.

Meals

- All aspects left blank, with two aspects, Food preparation and Cooking also reported to take significantly longer than typical, with no comment.

Pay Rent and Bills

- All aspects reported to be performed independently.

Medications

- All aspects reported to be performed independently.

Transportation

- Two aspects, Getting in and out of a vehicle and Using transit schedules and arranging transportation reported to be performed independently.
- Using public transit reported to require periodic assistance from another person, with the comment “anxiety”.
- Getting in and out of a vehicle is also reported to take significantly longer than typical, with no comment.

Social Functioning

- Two aspects reported to be independent: Appropriate social decisions and Interacting appropriately with others.
- One aspect, Able to deal appropriately with unexpected demands is reported to require periodic support.
- One aspect, Able to develop and maintain relationships, reported to require continuous support.
- There are no comments in this section.
- In the section dealing with immediate social network, the appellant is reported to have good functioning.
- In the section dealing with extended social networks, the Appellant is reported to have marginal functioning, with the comment “Difficulty due to social anxiety”.

Self-report

The Appellant reported that his symptoms make him largely housebound. He wrote that joint stiffness sometimes gets better during the day and sometimes persists, that he has limited mobility and uses a cane. He wrote that his lack of motivation and fatigue put a strain on personal relationships; he needs a lot of sleep and rest, which limits his productive hours. In the addendum to his PWD application, the Appellant wrote that he does not have the energy to cook, shower, shave, go out or do housework. He wrote that he forgets appointments, forgets to take medications and does not remember conversations.

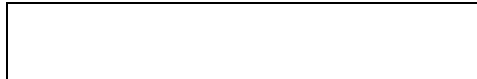
Need for Help

PR

The physician checked Yes, the Appellant requires prostheses or aids for his impairment, and wrote “walking cane”.

AR

- The physician left blank the section asking if the applicant needs help, describe the support/supervision



required which would help him to maintain himself in the community.

- The physician reported the Appellant receives assistance from friends and has a close relationship with his partner.
- Under assistance provided through the use of assistive devices, the physician ticked *Cane* and *Other*, with the comment "Pollution filtering mask".
- The physician indicated the Appellant does not have an assistance animal.

Self-report

The Appellant wrote that he often uses a cane to walk and support himself when standing up and sitting down.

2. A Request for Reconsideration signed by the Appellant April 22, 2016, in which he stated his argument regarding eligibility for PWD designation. The Panel will address the arguments of the Appellant and the Ministry in the reasons for the Panel decision.

The following documents were filed with the Request for Reconsideration:

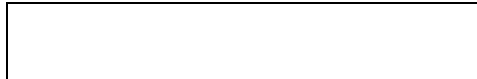
- (a) A letter from a friend of the Appellant dated April 24, 2016 stating that he regularly has to help him with his balance, making decisions and food. He wrote that he has seen the Appellant have panic attacks and emotional breakdowns and has seen his inability to communicate clearly.
 - (b) A letter from the Appellant's sister dated April 25, 2016, in which she listed limitations and symptoms she believes she shares with her brother and wrote that he has times when he struggles to get out of bed and feed himself.
3. The Ministry's Persons with Disabilities Designation Decision Summary dated March 23, 2016.
 4. The Ministry's letter to the Appellant advising him of their decision, dated March 23, 2016.

Additional submissions

The Appellant filed his Notice of Appeal dated May 27, 2016, in which he stated his argument that he has severe mental and physical impairment, that he frequently experiences symptoms in public where he reacts to known and unknown triggers, that he cannot think clearly, forgets things, makes illogical decisions, his heart races for hours at a time, he cannot speak clearly, his joints and muscles seize, he faints, becomes anxious, has panic attacks and as a result is housebound.

At the hearing, the Appellant stated that his condition has become more severe in the past year. He stated that he is unable to work, he is taking an immune suppressant, and he last worked in 2014. He stated that he has not been able to get a diagnosis of an environmental illness. He stated that he quickly becomes incapable in public environments due to dizziness, he is unable to speak clearly, has memory loss, migraine, anxiety and panic attacks causing brain fog and his heart races. He stated that he becomes socially isolated and has near-constant fatigue. He stated that his mother and sister have similar conditions. With respect to DLA's, the Appellant stated that his partner helps him with daily tasks, and he often uses a cane. He stated that he wears a mask when he goes out to avoid exposure to environmental triggers.

In response to questions from the Ministry, the Appellant stated that the physician's report of his functional abilities is not accurate; that his condition has gotten worse since the report was completed. He stated that his physician did not do any examination and rushed when completing the form. He stated that the report about how far he can walk is not accurate, that he can only walk 1 to 2 blocks and needs assistance with stairs.



In response to questions from the Panel, the Appellant stated that the physician who completed the form is his usual doctor and he also sees a rheumatologist.

The Ministry explained that the decision is based on the information before them at the time and the Appellant's application does not meet the legislative criteria for designation as a PWD.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which found that the appellant was not eligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. Based on the information provided in the PWD application and Request for Reconsideration, the ministry was not satisfied that the following criteria in EAPWDA section 2 were met: the appellant has a severe mental or physical impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA's, either continuously or periodically for extended periods, and, as a result of these restrictions, he requires help to perform those activities.

Legislation

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.

EAPWDR

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.

Severe mental or physical impairment

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements of section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes evidence from the appellant and from a prescribed professional regarding the nature of the impairment and its impact on the appellant's ability to manage the DLA's listed in section 2(1) of the EAPWDR. However, section 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional, in this case, a physician.

Appellant's position – Severe mental impairment

The Appellant argued that he has an environmental illness which causes him to become confused and dizzy, with cognitive impairment, that he has no energy and his anxiety and depression make social interaction extremely difficult, making him largely housebound.

Ministry's position – Severe mental impairment

In the reconsideration decision, the Ministry argued the Appellant does not have a severe mental impairment based on the information provided. The physician reported deficits to cognitive and emotional functioning in the areas of emotional disturbance, motivation, motor activity and memory, however, In assessing the impact on cognitive and emotional function on daily living, he indicated one major impact in the area of emotion, one moderate impact with other emotional or mental problems and minimal or no impact in the other areas listed.

Panel decision – Severe mental impairment

The Panel finds that the Ministry reasonably determined the Appellant does not have a severe mental impairment based on the information provided. The physician did not provide sufficient detail in the PR or AR to confirm that cognitive and emotional function is severely impacted by the Appellant's condition, reporting that all but two of the listed aspects have minimal or no impact on daily functioning. Most aspects of social functioning are managed independently, with periodic support required in dealing appropriately with unexpected demands and continuous support required with developing and maintaining relationships. It is unclear how frequently the appellant requires assistance to deal with unexpected demands and although the GP indicates the need for continuous assistance with developing and maintaining relationships, the GP also reports that the appellant has good functioning with his immediate social network , with marginal functioning for extended social networks due to social anxiety. . The GP also reports that the appellant has no problems with communication. Based on this, the Panel finds that the Ministry reasonably determined that a severe mental impairment under s. 2(2) of the EAPWDA was not established.

Appellant's position – Severe physical impairment

In his Request for Reconsideration, the Appellant argued that his physician did not fully recognize the true severity of his problems. The Appellant argued that he has an inflammatory disease that causes him to be in pain all the time, that he relies on a cane and railings to prevent falling, and he cannot accomplish tasks without the help of other people. In his addendum to the original PWD application, the Appellant argued that he does not have the energy to perform many household tasks.

The Appellant stated at the hearing that he quickly becomes incapable in public environments, suffering dizziness, memory loss, migraine, fatigue and becomes sick more often due to the immune suppressants he is taking. He submits that the physician's description of his physical limitations is not accurate, and his condition has become worse since the PWD application was completed.

Ministry's position – Severe physical impairment

The Ministry argued that a severe physical impairment has not been established because the Appellant is reported to be able to walk 4+ blocks unaided, climb 5+ steps unaided, lift 5 to 15 pounds and remain seated 2 to 3 hours, with the note "but experiences pain". The physician reported the Appellant is able to independently manage walking indoors and outdoors, noting that he uses a cane, climbing stairs, standing, and carrying and holding. The Ministry argued that the functional skill limitations reported are more in keeping with a moderate degree of physical impairment.

Panel's decision – Severe physical impairment

The Panel finds that the Ministry reasonably determined a severe physical impairment has not been established on the basis of the information provided. As argued by the Ministry, the AR and PR does not confirm that the Appellant's impairment of physical functioning is severe. The functional limitations reported by the physician – walking 4+ blocks unaided, climbing 5+ stairs unaided, lifting 5 to 15 pounds and remaining seated for 2 to 3 hours, although he noted "but experiences pain", do not indicate a severe impairment, as noted by the Ministry. In terms of mobility and physical ability as reported in the AR, the physician reported that walking indoors and outdoors, climbing stairs, standing and carrying and holding are performed independently, with the note "uses cane" for walking outdoors. Based on the physician's indication that the appellant is able to walk 4+ blocks unaided, it is unclear under what circumstances the physician is indicating the use of a cane. Lifting is reported to require periodic assistance, which based on the physician's comment "difficulty lifting larger than 15 lbs" suggests assistance with weights above of 15 lbs. While the panel acknowledges the Appellant's argument that his physician did not accurately report his limitations, as information from a medical practitioner is fundamental basis for assessing PWD eligibility, the Panel finds that the Ministry reasonably determined that a severe physical impairment under EAPWDA s. 2(2) was not established.

Restrictions in the ability to perform DLA's

Appellant's position

In his self-report, the Appellant stated that he has difficulty getting out of bed, he uses a cane, he has to hold onto railings, he doesn't cook, he doesn't shower, and doesn't do housework. He wrote that he is not independent with DLA's and relies on friends for help. The Appellant argued that he cannot think clearly and makes illogical decisions when his environmental illness is triggered.

Ministry's position

In the reconsideration decision, the Ministry noted that the Appellant's physician reported that the appellant

takes significantly longer managing areas of personal care, basic housekeeping, going to and from stores, meals, and getting in and out of a vehicle and requires periodic assistance with carrying purchases home and using transit. No information was provided to explain the type, frequency or the degree of assistance required. All other areas of daily living, shopping, meals, paying rent and bills, medication, and transportation were indicated as being performed independently.

Panels' decision – Restrictions to DLA's

Subsection 2(2)(b)(i) of the EAPWDA requires the Ministry to be satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA's either continuously or periodically for extended periods. In the present case, the Appellant's physician is the prescribed professional. DLA's are defined in section 2(1) of the EAPWDR and are also listed in the PR, with additional details in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA's are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods.

As noted by the Ministry, the physician's report indicates that the Appellant requires periodic assistance with carrying purchases home, using public transit and continuous support with developing and maintaining relationships, with no explanation of the nature or frequency of the assistance required. To establish periodic restrictions for extended periods, the physician would need to explain how often help is required. All other tasks of DLA are reported as being managed independently, with specific tasks of personal care, basic housekeeping, and shopping reported as taking 25-50% longer to perform. As the majority of DLA tasks are managed independently, with what the ministry has reasonably viewed as little help from others, the panel finds that the ministry reasonably determined that the information from a prescribed professional does not confirm that the Appellant's impairment directly and significantly restricts DLA's either continuously or periodically for extended periods, and that the criterion in s. 2(2)(b)(i) of the EAPWDA has not been met.

Help to perform DLA's

Appellant's position

The Appellant stated that he often uses a cane and that he relies on railings to climb stairs. He stated that his partner helps him with DLA's.

Ministry's position

The Ministry argued that as it has not been established that DLA's are significantly restricted, it cannot be determined that significant help is required from other persons.

Panels' decision – help to perform DLA's

Section 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restriction to DLA's, the person requires help to perform them. Where another person is providing help, the level of assistance or supervision must be significant, as set out in s. 2(3)(b)(ii) of the EAPWDA. The Panel recognizes that the Appellant's partner provides him with assistance; however the Panel finds that the Ministry reasonably determined that the information provided does not confirm significant restrictions to DLA's as a result of the Appellant's impairment and notes that apart from the notation that the Appellant uses a cane, there is no detail provided with respect to the degree or type of assistance required. The Panel therefore finds that the Ministry reasonably determined that the criterion for help under EAPWDA s. 2(2)(b)(ii) was not met.

The Panel finds that the Ministry's decision denying the Appellant PWD designation under s, 2 of the EAPWDA was reasonably supported by the evidence. The Panel therefore confirms the Ministry decision.