

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated May 9, 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

The evidence before the minister at reconsideration consisted of the following:

1. A PWD application is comprised of the Applicant Information and Self-report signed by the appellant on December 16, 2015, as well as a Physician Report (“PR”) dated November 28, 2015 and Assessor Report (“AR”) dated November 29, 2015 both completed by a general practitioner (“the physician”). In the PR, the physician indicated the appellant has been his patient for more than 20 years 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 by way of “coordinating medical tests/referrals”.

The PWD application included the following information:

Diagnoses

PR

In the PR, the appellant was diagnosed with “endocrine disorder NYD” with no date of onset. Under Health History, the physician wrote that the appellant presented with symptoms of fatigue and general malaise. Extensive investigations included assessment by several specialists. He has symptoms of idiopathic hypoglycemia but a concrete diagnosis has never been reached. The physician wrote that the appellant is very limited in what he can do; he gets attacks of hypoglycemia with minimal exertion; there are no medications; he has had a very difficult time adapting to this condition as the hypoglycemia is unpredictable.

Self-report

The appellant described severe hypoglycemia, post-prandial as well as post-exercise, and that his blood sugar levels are worse with diet and exercise. He wrote that his condition has not been figured out and it is getting worse.

Functional Skills

PR

The physician provided the following information regarding any functional limitations:

- No details were provided with respect to specific skills; the physician wrote “10 mins” beside the question “How far can this person walk unaided on a flat surface” and bracketed all of the functional skill questions with the comment “These are only a problem when he starts a task that requires exertion of some sort, e.g. walk long distances, treadmill, work hard. The episodes are unpredictable. At rest there may be no symptoms.”
- The physician ticked “NO” to the question “Are there difficulties with communication other than a lack of fluency in English?”
- No significant deficits with cognitive and emotional function were indicated.

AR

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

- Ability to Communicate: All aspects reported as “good”.
- Mobility and Physical Ability” All aspects reported as independent.
- Cognitive and Emotional Functioning: The physician wrote “N/A”, with the comment “The inability to do things he once enjoyed, e.g. exercise, go camping, travelling has made him depressed”.

Self-report

The appellant wrote that his biggest problem is severe hypoglycemia after exercise, which can be as little as walking for 10 minutes. He wrote that he can barely exercise once or twice a week, he has difficulty sleeping and he has severe depression. Everyday activities like cooking, cleaning and laundry take a toll on him and his social life is affected.

Daily Living Activities (DLA's)

PR

- The physician ticked "No", the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA's.

AR

The physician provided the following information:

Personal Care

- All aspects reported to be performed independently.

Basic Housekeeping

- All aspects reported to be performed independently.

Shopping

- All aspects reported to be performed independently.

Meals

- All aspects left blank, with the comment "This is done by family."

Pay Rent and Bills

- All aspects reported to be performed independently.

Medications

- All aspects reported to be performed independently.

Transportation

- All aspects reported to be performed independently.

Social Functioning

- All aspects reported to be independent.
- In the section dealing with immediate social network, the appellant is reported to have marginal functioning, with the comment "Socially withdrawn at this time".
- The section dealing with extended social networks is left blank.

Need for help

PR

The physician checked "No", the appellant does not require any prostheses or aids for his impairment.

AR

- The physician ticked the box “Family”, with the comment “Meal preparation/family support”.
- The physician wrote “N/A” at the top of the section headed Assistance provided through the use of assistive devices.
- The physician wrote “N/A” in the section asking if the appellant has an assistance animal.

Self-Report

The appellant did not address assistance with DLA’s in his self-report.

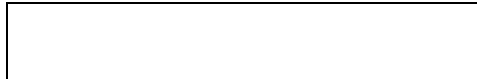
2. A copy of a letter from a physician to another physician dated July 28, 2014, stating that the appellant presented with hypoglycemia that is more of a nuisance than life-threatening.
3. A copy of an Outpatient Diabetes Education Centre Encounter Summary dated August 6, 2014.
4. A copy of an Outpatient Diabetes Education Centre Encounter Summary dated July 7, 2014.
5. A copy of a consultation report dated October 13, 2011.
6. A copy of a hospital Progress Note dated December 1, 2015.
7. A copy of a hospital Progress Note dated August 6, 2014.
8. A copy of a hospital Progress Note dated June 9, 2014.
9. A copy of a hospital Progress Note dated April 17, 2014.
10. A copy of a hospital Progress Note dated April 10, 2014.
11. A copy of an Internal Medicine Consult dated March 11, 2014.
12. The ministry’s Persons with Disabilities Designation Decision Summary dated April 12, 2016.
13. A copy of the ministry’s letter to the appellant dated April 12, 2016 advising him of their decision.
14. The appellant’s Request for Reconsideration, signed by the appellant April 25, 2016, in which he stated his argument regarding eligibility for PWD designation. Included with the Request for Reconsideration was a letter from a physician dated March 21, 2016, with attached laboratory reports.

Additional submissions

Subsequent to the Reconsideration Decision, the appellant filed his Notice of Appeal dated May 19, 2016, in which he stated that many specialists are involved in treatment of a tumor on his pancreas, and it could take many months. In the meantime, he is unable to lead a normal life.

At the hearing, the appellant stated that it has now been confirmed that he has a tumor on his pancreas which causes his blood sugar to drop very low. He stated that he tries to keep his blood sugar level above 2.2, which is life-threatening. He stated that the treatment is surgery, which he hopes to have soon.

The appellant stated that he does “pretty much nothing” due to being fatigued physically and mentally. He



stated that his cognitive function is low because of sleep interruption due to low blood sugar. He said he was working part-time, but had to stop, he has little social life and he is basically sedentary. In response to questions from the Panel, the appellant stated that the tumor has not been located precisely and he will need additional tests. He stated that he drives because walking can trigger an event, he plays tennis and hockey sometimes and has to take supplements and return home to eat immediately.

The ministry responded that their decision was based on the legislation and the information before them at the time the decision was made.

The Panel admits the appellant's oral testimony as evidence under section 22(4) of the Employment and Assistance Act as it corroborated and was therefore in support of the information in the reconsideration decision and will address the parties' positions in the reasons for the Panel decision.

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 his condition makes him feel exhausted and depressed, sometimes to the point of crying, and that he is unable to live a normal life. He stated that he has a low standard of living and cannot do normal things.

Ministry position – Severe mental impairment

In the Reconsideration Decision the ministry argued that the appellant does not have a severe mental impairment based on the information provided by the physician. The ministry noted that the physician did not report any significant deficits with the appellant's cognitive and emotional function and that marginal social functioning was reported with the appellant's immediate social network, however he did not indicate what the appellant's level of functioning is with his extended social network or if any support or supervision is required.

Panel decision – Severe mental impairment

The Panel finds that the ministry reasonably determined that the appellant does not have a severe mental impairment, based on the information provided. There is no diagnosis of a mental impairment; the physician indicated that there are no significant deficits with cognitive and emotional function. In the AR, no impacts on daily functioning are listed, other than the comment that the inability to do things the appellant once enjoyed has made him depressed. Social functioning is indicated as being independent other than marginal functioning with immediate social network and no requirement for support or supervision is reported. Based on the available evidence, the Panel finds that the ministry reasonably determined that a severe mental impairment under EAPWDA s. 2(2) was not established.

Appellant's position – Severe physical impairment

In his Request for Reconsideration, the appellant argued that walking less than 5 minutes can cause episodes of hypoglycemia, almost losing consciousness, and only a sedentary lifestyle and eating high amounts of carbohydrates prevent hypoglycemia. At the hearing he argued that he is at high risk of seizures, coma and stroke, that he cannot live a normal life and must exercise at a careful pace. He stated that he gets fatigued physically and mentally. He reported that he has been approved for Canada Pension Plan disability status.

Ministry position – Severe physical impairment

The ministry argued that a severe physical impairment has not been established because the appellant was reported by his physician as only having problems walking, climbing stairs lifting and remaining seated when he starts a task that requires exertion of some sort. In the AR, the physician reported the appellant is able to manage all DLA's independently and does not indicate that he requires any aids for his impairment. The ministry noted that the ability to work is not a criterion in determining eligibility for PWD designation.

Panel 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. The panel notes that at the time the PWD application was completed, the appellant's physician wrote that a concrete diagnosis has never been reached, however his symptoms of hypoglycemia are severe. As argued by the ministry, the reported range of function in the PR and AR does not confirm that the appellant's impairment is severe, despite the severe symptoms of hypoglycemia. The appellant is reported to be able to perform all functional skills except when he starts a task that requires exertion, such as walking long distances, using the treadmill or working hard. The appellant stated that he plays hockey and tennis sometimes, then has to go home to eat immediately. Based on the level of independent physical functioning reported by the physician, the Panel finds that the ministry reasonably determined that a severe physical impairment under EAPWDA s. 2(2) was not established.

Restriction in the ability to perform DLA's

Appellant's position

In his self-report, the appellant wrote that he becomes severely hypoglycemic after as little as 10 minutes' exercise, which causes him to have difficulty concentrating and his memory and capacity to study are severely limited. He wrote that everyday activities like cooking, cleaning and laundry are immensely more difficult than when he was not sick. Because of fatigue, he finds it difficult to socialize, and it usually takes him 1 to 2 hours to get out of bed due to fatigue. The appellant argued at the hearing that he does pretty much nothing and is sedentary.

Ministry position

The ministry, in the Reconsideration Decision, noted that in the AR the physician indicated that the appellant is independently able to manage all DLA's with the exception of planning, preparing and cooking meals and safe storage of food, which is done by family.

Panel decision

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.

The Panel finds that the ministry reasonably determined the evidence of the physician does not establish that the appellant's DLA's are directly and significantly restricted either continuously or periodically for extended periods. As noted by the ministry, the PR and AR reports indicate the appellant independently performs all listed aspects of all DLA's with the exception of meals, which is reported to be done by the appellant's family. No additional information was provided by the physician. The Panel finds that the ministry reasonably determined the criteria in EAPWDA s. 2(2)(b)(i) have not been met.

Help to perform DLA's

Appellant's position

The appellant made no submission with respect to assistance.

Ministry position

The ministry, in the Reconsideration Decision, argued that the information provided does not establish that to perform DLA's that are directly and significantly restricted the appellant requires an assistive device, the significant help of another person or the services of an assistance animal.

Panel decision

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA's, the person requires help to perform an activity. Where another person is providing help, the level of assistance or supervision required must be significant, as set out in s. 2(3)(b)(ii) of the EAPWDA. The Panel notes that with the exception of meal preparation, which is reported to require family support, the appellant is reported to require no assistance with DLA's, does not require assistive devices and does not have an assistance animal. The Panel finds that the ministry reasonably determined the criterion for help under s. 2(2)(b)(ii) was not met.

Conclusion

The Panel finds that the ministry's reconsideration 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.