

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated April 15, 2016 which held 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* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that a medical practitioner confirmed that the appellant has an impairment that is likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the evidence establishes that 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, 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 following documents were before the ministry at reconsideration.

- PWD application comprised of:
 - 1) the appellant's Self-report (SR) dated September 22, 2015;
 - 2) a Physician Report (PR);
 - 3) an Assessor Report (AR); and
 - 4) an attached 2-page letter dated August 17, 2015 ("the letter").The PR and AR, both dated September 18, 2015, and the August 17, 2015 letter were completed by the appellant's general practitioner (GP) of more than 1 year.
- Medical Report (MR) – Employability dated September 21, 2015 completed by the GP with what appear to be additional comments written by the appellant which were not initialed by the GP.

On appeal, the appellant did not provide additional evidence, noting that there was insufficient time for him to obtain the required documents. The panel notes that the ministry indicates that the appellant was approved for an extension allowing for additional time to provide information at reconsideration and that on appeal, the appellant's deadline for providing his written submission was extended from April 27th to May 24th.

The ministry did not provide additional evidence and relied on its reconsideration summary.

Summary of relevant evidence

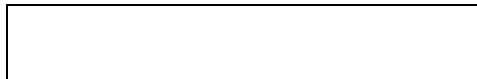
Diagnoses

In the PR, the GP diagnoses scoliosis, chronic right leg and left shoulder pain, headaches, and insomnia. In the letter, the GP adds that right leg problems include the knee and ankle and that the appellant also has seasonal allergies and right ear pain. In the MR, the GP identifies chronic back pain due to scoliosis as the appellant's primary medical condition, and insomnia, right leg pain, left shoulder pain, and headaches as secondary medical conditions.

Physical Impairment

In the PR, AR and the letter the GP provides the following information.

- Diagnosis is debilitating and over time will worsen.
- Previous injuries have caused chronic pain for which medication is required.
- Recent x-ray shows right ankle arterial calcification.
- The appellant can
 - walk 2 to 4 blocks unaided (depending on back pain);
 - climb 2 to 5 steps unaided (with frequent rest breaks);
 - lift up to 10 lbs. (due to back injury/pain and shoulder injury – previous dislocation); and
 - remain seated 1 to 2 hours.
- Walking indoors and outdoors and climbing stairs are managed independently taking significantly longer than typical due to back and leg pain, requiring frequent rest breaks, pain



medication and avoidance.

- Standing is managed independently.
- Lifting and carrying/holding require periodic assistance from another person.

In the MR, the appellant's overall medical condition is identified by checkmark as being moderate, rather than mild or severe, though it is uncertain as to whether the GP or the appellant made the checkmark.

In his SR, the appellant writes that due to his back injury he is no longer able to do his work which involves heavy machinery and causes very bad back pain. Prescribed medication is the only way he can function. He describes his disability as very bad back pain and shoulder conditions.

Mental Impairment

The GP provides the following information in the PR and AR.

- There are no difficulties with communication, with satisfactory ability for speaking, reading, writing, and hearing.
- The GP has checked boxes in the PR indicating significant deficits for emotional disturbance, motivation, and attention or sustained concentration but provides no written details about these deficits.
- The section of the AR report listing 14 areas of cognitive and emotional functioning and their impact on daily functioning is noted as N/A.

DLA

The GP reports the following:

- Chronic back pain, scoliosis, headaches, right leg pain (including knee and ankle), left shoulder pain, insomnia, seasonal allergies, and right ear pain impact the ability to manage DLA.
- Personal care – dressing, grooming, bathing, toileting, transfers in/out of bed and on/off of chairs are all managed independently, taking significantly longer to complete due to back and leg pain. Takes pain medication on regular basis to complete these tasks. Feeding self and regulate diet are managed without any noted limitation.
- Basic housekeeping – laundry and basic housekeeping require continuous assistance from another person – done by friends and family.
- All listed tasks of shopping, meals, paying rent and bills, medications, transportation, and social functioning are independently managed without any noted limitation.
- Marginal functioning with immediate and extended social networks.

Need for Help

The GP reports that family and friends provide assistance. No assistive devices are identified as being required. The appellant does not require an assistance animal.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

Relevant Legislation

EAPWDA

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.

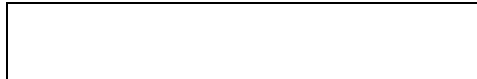
(3) For the purposes of subsection (2),

(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).

EAPWDR

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

Severe Impairment

The legislation provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed

professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define “impairment”, the PR and AR define “impairment” as a “loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration.” While this is not a legislative definition, and is therefore not binding on the panel, in the panel’s opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

Physical Impairment

The appellant’s position is that he is unable to work due to back injuries and is disabled by the resulting pain from injuries to his back and shoulder.

The ministry’s position is that the reported physical functional skills and other information respecting physical functioning demonstrate limitations to physical functioning due to back, shoulder and leg pain but that the assessments provided by the GP speak to a moderate rather than severe physical impairment.

Panel Decision

The appellant and his GP identify a number of medical conditions impacting physical functioning, with the greatest impact being related to chronic back pain, right leg pain and left shoulder pain. The functional skills reported by the GP are in the mid-range of the listed options, including being able to independently walk 2 – 4 blocks and lift up to 10 lbs. The GP indicates that the ability to walk depends on the level of back pain and that the appellant takes significantly longer to manage all walking and climbing steps, rests frequently, and is dependent upon pain medication. The GP does not indicate how much longer the appellant takes. The appellant does not describe his functioning in terms of these activities but indicates that he is no longer able to work at his job which involved heavy machinery. However, in accordance with the legislation, the ability to work is not the basis upon which eligibility for PWD designation is established.

The panel finds that the ministry has reasonably viewed the level of independent physical functioning assessed by the GP as reflecting a moderate level of physical impairment and reasonably determined that a severe physical impairment was not established.

Mental Impairment

The appellant does not argue that he has a mental impairment.

The ministry notes that a mental condition is not diagnosed and that although significant deficits with cognitive and emotional functioning are identified in the PR, in the AR the GP reports that the section addressing cognitive and emotional functioning is N/A and that there are no problems with communication, and social functioning is managed independently. The ministry concludes that the information provided by the GP does not establish a severe mental impairment.

Panel Decision

The appellant is not diagnosed with a mental condition or brain injury. While the GP notes three significant deficits with cognitive and emotional functioning in the PR, the balance of the PWD application and the letter do not identify any impairment of cognitive and emotional function, with the GP noting that the section respecting mental impairment in the AR is not applicable and that the appellant has no difficulties with communication, decision-making, or social functioning. The appellant's own information is limited to describing his physical medical conditions.

Based on the above analysis, the panel finds that the ministry reasonably determined that the information does not establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

The appellant does not provide argument specific to his ability to perform DLA.

The ministry notes that both laundry and basic housekeeping require continuous assistance and that many tasks of personal care take significantly longer to perform but that the GP has not described how much longer these tasks take to complete, making it difficult to determine if they represent a *significant* restriction to the appellant's *overall* level of functioning. All other aspects of DLA are managed independently. The ministry concludes that the assessments provided by the GP are indicative of a *moderate* level of restriction but do not establish that a severe impairment *significantly restricts* DLA continuously or periodically for extended periods.

Panel Decision

The legislative requirement respecting DLA set out in section 2(2)(b) of the EAPWDA is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, in the opinion of a prescribed professional, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are listed in both the PR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative.

In this case, the appellant's GP, a prescribed professional, indicates that all tasks of most DLA – shopping, meals, paying rent and bills, medications, transportation, and social functioning – are managed independently without any noted limitation. The appellant is reported as taking significantly longer with moving about indoors and outdoors and with most tasks of personal care. It is unclear how much longer the appellant takes to perform these tasks, which as the ministry argues, makes it difficult to determine the significance of the restriction. For basic housekeeping, the appellant requires continuous assistance from another person.

Given the level of independence with which the appellant is reported to manage his DLA, with the exception of basic housekeeping, and in the absence of further description of the restrictions with

moving about indoors and outdoors and personal care, the panel finds that the ministry reasonably concluded that the information indicates a moderate level of restriction. The panel therefore finds that the ministry reasonably determined that a severe impairment that significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA has not been established.

Help to perform DLA

The appellant does not provide argument specific to his need for help with DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that 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 DLA.

The establishment of direct and significant restrictions with DLA are a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision.