

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 16, 2016 which found that the appellant did not meet three 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 and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied 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 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 appellant's Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated January 15, 2016, a physician report (PR) dated January 13, 2016 and an assessor report (AR) dated January 15, 2016 both completed by a general practitioner who has known the appellant since November 2015.

The ministry also had before it the appellant's Request for Reconsideration, with an accompanying submission by an advocate dated June 15, 2016 that reviewed the application and explained why the appellant disagreed with the denial of PWD designation.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with congestive heart failure and coronary artery disease. 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 wrote "nil." There was no mental health diagnosis.

Physical Impairment

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

- In terms of health history, the appellant has "shortness of breath (only able to walk 2 blocks), congestive heart failure (illegible) severe left ventricle dysfunction, multi-vessel heart disease, not fit for surgery, ischemic cardiomyopathy."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg (5 to 15 lbs.) and remain seated 1 to 2 hours.
- The appellant is restricted with mobility outside the home, with no assessment provided as to whether the restriction is continuous or periodic. Asked to provide additional comments regarding the degree of restriction, the general practitioner wrote "mobility, unable to work."
- In the additional comments to the PR, the general practitioner wrote that the appellant has "severe heart issues" and that he is "unfit for surgery."
- In the AR, the appellant is assessed as being independent with all aspects of mobility and physical ability, specifically: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, the general practitioner responded that none of the listed assistive devices are routinely used by the appellant.

In his self-report, the appellant wrote that:

- He had a heart attack and heart failure in 2015 and he has no energy like before.
- He is on medication.
- He is living with his daughter and she helps him lots.

Mental Impairment

In the PR and AR, the general practitioner reported:

- No assessment with respect to whether the appellant has difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- In the AR, the general practitioner indicated that the appellant has a good ability to communicate in speaking, reading, writing and hearing.

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- With respect to impacts to cognitive and emotional functioning, there are minimal impacts in all areas, with no further comment by the general practitioner.
 - Regarding impacts to social functioning, the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
 - The section of the report for assessing impacts to the appellant's immediate and extended social networks is not completed.

Daily Living Activities (DLA)

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

- The appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA.
- The appellant is not restricted with several of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, use of transportation and management of finances.
- The appellant is restricted with the DLA daily shopping and with mobility outside the home. The general practitioner did not assess the restrictions as either continuous or periodic and wrote with respect to the degree of restriction "mobility, unable to work."
- There was no assessment provided for mobility inside the home or for social functioning.
- In the AR, the appellant is assessed as independent with walking indoors and walking outdoors.
- The appellant is independent with all of the assessed tasks of several DLA, specifically personal care (dressing, grooming, bathing, toileting, transfers in/out of bed, transfers on/off of chair), basic housekeeping (including laundry), pay rent and bills (including banking and budgeting), and medications (filling/refilling prescriptions, taking as directed, and safe handling and storage).
- For the DLA shopping, the appellant is independent with most tasks (reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home), and requires periodic assistance with going to and from stores. The general practitioner did not provide a further explanation or description of the assistance needed.
- Regarding the meals DLA, the appellant is independent with most tasks (food preparation, cooking, and safe storage of food) and requires periodic assistance from another person with the task of meal planning. No further comment is provided.
- Regarding transportation, the appellant requires periodic assistance with all tasks, specifically: getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation.
- For additional information, the general practitioner wrote that "shortness of breath, chest pain (multi-vessel heart disease)."

In his self-report, the appellant wrote that:

- He lost his job and he is unable to work.
- He does not know what he can do without his daughter.

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant receives help from family "re shopping etc." In the section of the AR for

identifying assistance provided through the use of assistive devices, the general practitioner wrote "nil."

Additional information

In his Notice of Appeal dated June 22, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- He can do basic things for himself like carrying some little things.
- Things that require more work- walking around the store- takes a lot longer than it used to.
- He is not able to work and he is waiting for surgery. He hopes he lives through surgery and that he can find work afterwards.
- He is hoping for temporary financial assistance as very little else is available.

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

- 1) Surgical day care instructions dated June 8, 2016; and,
- 2) Blank Medical Report-Employability.

At the hearing, the appellant stated that:

- He had worked for 25 years in his trade and then had a heart attack and now he only gets \$217 per month and it is not enough. He had his heart attack and was in hospital in February 2015 and he moved from another province in July 2015 to live with his daughter in British Columbia. He lives with his daughter because he is single and he lost his house in the other province and "lost everything" because he cannot work.
- Although the doctors first thought that he was not a good candidate for surgery and he only had a 15% chance of survival, with changes to his diet over the past year his health has improved and he has been told that he may have surgery this month and his chance of survival is 50 to 55%. He has been given instructions for his upcoming surgery, as set out in the printed instructions sheet.
- His last heart assessment took 4 hours and the surgeon said he needs a minimum of a triple bypass because two of his arteries are completely blocked and the third one is 80% blocked. The surgeon said he will not know until he starts the surgery how extensive the damage is.
- He is not looking for disability since he wants to work again after his surgery.
- He went back to his doctor on the advice of his advocate and asked the doctor to change the reports but his doctor would not make any changes, the appellant thought perhaps because of the doctor's professional reputation and, instead, gave him the Medical Report-Employability to complete so he does not have to work. He thinks his doctor may not have known how to complete the PWD application reports. Although an advocate suggested going to another doctor, he had to find this doctor when he came from another province and it is not easy.
- He has been given a spray to use in an emergency and then he has to call 9-1-1.
- His daughter has young children and he needs help because he cannot work.
- His daughter supervises him in that she buys medicine, food, and buys everything for him.
- He has been getting dizzy lots with blurred vision. He takes nine different medications. His doctor said not to bend over so that his head goes below his heart. If he needs to pick something off the floor, for example, he has to squat straight down.
- His daughter is doing most of the house things. He can take care of his personal care but he is much slower than before. He sometimes makes meals. He cannot go to work like he used to.
- It takes him 2 hours to cut the lawn because he has to sit down due to being short of breath. His cardiologist told him to take it easy.



- He was taking a blood thinner which made him bruise easily, and he does not heal like before.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that the other option for obtaining support, the Persons with Persistent Multiple Barriers (PPMB) status, requires a medical report completed the doctor, which is different than the Medical Report- Employability given to the appellant by his doctor.

Admissibility of Additional Information

The ministry did not object to the additional documents being admitted but questioned their relevance, and did not raise an objection to the appellant's oral testimony. The panel considered the appellant's oral testimony as information that corroborates the extent of his impairment as diagnosed in the PWD application, which was before the ministry at reconsideration, and the documents were presented as part of the appellant's narrative. 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 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 evidence does not establish that the appellant has a severe mental or physical impairment and that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, 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.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the shortness of breath, dizziness and blurred vision, and lack of energy due to congestive heart failure and coronary artery disease. The appellant argued that when the general practitioner completed the AR, he did not appreciate the significant impacts the appellant is experiencing as there may not be communication between the general practitioner and his cardiologist.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry wrote that the general practitioner assessed the appellant with functional skills in the middle of the range and reported that he is independent with all listed areas of mobility and physical ability.

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

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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 general practitioner.

In the PR, the general practitioner, who had known the appellant for a little over 2 months, diagnosed the appellant with congestive heart failure and coronary artery disease. In terms of health history, the general practitioner wrote that the appellant has “shortness of breath (only able to walk 2 blocks), congestive heart failure (illegible), severe left ventricle dysfunction, multi-vessel heart disease, not fit for surgery, ischemic cardiomyopathy.” In the additional comments to the PR, the general practitioner wrote that the appellant has “severe heart issues” and that he is “unfit for surgery.” The appellant wrote in his self-report that he had a heart attack and heart failure in 2015 and he has no energy like before. At the hearing, the appellant stated that he has been getting dizzy lots with blurred vision, that he takes nine different medications and also a spray to be used in an emergency. He also stated that he is currently waiting for triple bypass surgery, which may occur later this month. Although the appellant argued that the information recorded by the general practitioner in the application was incomplete or incorrect, the panel finds that the ministry reasonably relied on the information of the general practitioner as describing the impacts of his physical conditions on his daily functioning.

The general practitioner described the appellant’s heart issues as “severe,” however, the general practitioner assessed the appellant in the PR with functional skills in the moderate range, reporting the appellant can walk 2 blocks unaided, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated 1 to 2 hours. The general practitioner further reported that the appellant does not require an aid for his impairment and assessed the appellant as being independent with all aspects of mobility and physical ability, specifically: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. In the PR, while the general practitioner indicated that the appellant is restricted with mobility outside the home, he did not provide an assessment provided as to whether the restriction is continuous or periodic. Asked to provide additional comments regarding the degree of restriction, the general practitioner wrote “mobility, unable to work.” As discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the evidence indicates that the limitations to the appellant’s physical functioning have not directly and significantly restricted his ability to perform his DLA either continuously or for extended periods, as required by the EAPWDA.

Given the general practitioner assessed function skill limitations in the moderate range, restriction to the appellant’s outdoor mobility with no explanation of the degree of the restriction, as well as independence in all areas of mobility and physical ability, 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 did not advance a position that he has a severe mental impairment.

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 wrote that the general practitioner did not assess significant deficits with cognitive and emotional functioning, with no major impacts, and the appellant has a good ability to communicate in all listed areas of communication. The ministry wrote that the general practitioner indicated the appellant is

independent with all listed areas of social functioning.

Panel Decision

The general practitioner did not diagnose the appellant with a mental disorder and indicated that there are no significant deficits with cognitive and emotional functioning. However, in assessing the impacts to cognitive and emotional functioning, the general practitioner reported a minimal impact in the all areas. Regarding impacts to social functioning, the general practitioner assessed the appellant as being independent in all areas, with good communication in all areas.

Given the absence of a mental health diagnosis and insufficient evidence from the general practitioner of significant impacts to the appellant's cognitive and emotional and social functioning, 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 impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, specifically his daughter.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professional does not establish that the appellant's impairment significantly restricts his DLA either continuously or periodically for extended periods of time. The ministry wrote that while the general practitioner indicated that the appellant requires periodic assistance with some of the listed tasks of DLA, there is no indication of the frequency or duration of these restrictions.

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 either continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA. Asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the general practitioner wrote "nil" in the AR. The general practitioner reported in the PR that the appellant is not restricted with most of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, use of transportation, and management of finances. In the AR, the general practitioner also indicated no need for assistance with personal care, basic housework, management of finances (or "pay rent and bills") and management of medications. However, the general practitioner indicated a need for periodic assistance from another person with 1 of 4 tasks of the DLA meals (meal planning) and all tasks of the DLA transportation (getting in and out of vehicle, using public transit, and using transit schedules and arranging transportation). The general practitioner wrote as additional comments "shortness of breath, chest pain, multi-vessel heart disease," but did not elaborate on how often the appellant requires assistance with these tasks, or for how long. At the hearing, the appellant stated that he can take care of his

personal care but he is much slower than before, and he sometimes makes meals. The appellant stated that his daughter is doing most of “the house things” and she supervises him in that she buys medicine, food, and buys everything for him.

The general practitioner reported in the PR that the appellant is restricted with the DLA daily shopping and with the ‘mobility outside the home’ aspect of the DLA moving about indoors and outdoors. The general practitioner did not assess the restrictions as either continuous or periodic and wrote, with respect to the degree of restriction, “mobility, unable to work.” In his self-report, the appellant wrote that he lost his job and he is unable to work and he does not know what he can do without his daughter. At the hearing, the appellant stated he cannot go to work like he used to. 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.

As well, in the AR the general practitioner assessed the appellant as independent with both walking indoors and walking outdoors, with no need for an assistive device, and there was no explanation or description for the need for periodic assistance with 1 of 5 tasks of shopping (going to and from stores) to allow the ministry to determine that the assistance is required for an extended period of time.

Considering the evidence of the general practitioner as the prescribed professional, the panel finds that there was not sufficient detail provided to establish a need for periodic assistance for extended periods of time. Therefore, the panel finds that the ministry reasonably concluded 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 impairment significantly restricts his daily living functions to a severe enough extent that significant assistance is required from another person.

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, the appellant receives help from family “re shopping etc.” In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner wrote “nil.”

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 pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.