

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated June 23, 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 comprised of the applicant information and self-report signed by the Appellant on January 8, 2016, a Physician Report (PR) dated January 25, 2016 and an Assessor Report (AR) dated January 25, 2016, both completed by a general practitioner. In the PR, the physician reported that the Appellant has been his patient since 2013, and that he has seen him 11 or more times in the past 12 months.

The PWD application included the following information:

### **Diagnoses**

#### PR

In the PR, the Appellant's diagnoses were reported as NSTEMI, onset August, 2013; CABG x4, September, 2013; Below knee DVT – left calf, August 2013; Gastric Ulcer, 2013; Left Carotid Stenosis, 2013; Ventriculitis, May, 2013 and Drug Eluting Stent (2). Under Health History, the physician wrote that the Appellant is still having chest pain.

#### Self-Report

The Appellant wrote that he had 5 heart bypasses which limit his activities and a subsequent operation to place 2 stents due to blockage and that his cholesterol is being monitored. He wrote that physical activity aggravates his functioning.

### **Functional Skills**

#### PR

The physician provided the following information regarding functional limitations:

The Appellant:

- Can walk an unknown distance on a flat surface.
- Can climb an unknown number of stairs.
- Can lift 2 to 7 kg.
- Can sit with no limitation.
- Has no difficulties with communication other than a lack of fluency in English.
- Has no significant deficits with cognitive and emotional function.

#### AR

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

- The physician wrote "No" in the space provided to describe the applicant's mental or physical impairments that impact his/her ability to manage daily living activities.
- Ability to Communicate: speaking, reading, writing and hearing are good.
- Mobility and Physical Ability: Walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding are reported as independent, with the comment "Except heavy object lifting."
- In the section dealing with cognitive and emotional functioning, the physician wrote "N/A".

#### Self-Report

The Appellant reported that he can walk approximately 3 blocks on a level surface, but is unable to navigate hills and inclines without severe shortness of breath and chest pain due to exertion, and he also experiences dizziness.

### **Daily Living Activities (DLA's)**

#### PR

In the section of the PR dealing with daily living activities, the physician ticked "no" in answer to the question "Does the impairment directly restrict the person's ability to perform daily living activities?"

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

#### AR

The physician reported that all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation are performed independently, with no comments.

The section dealing with Social Functioning is left blank, with "N/A" written at the top.

#### Self-Report

The Appellant wrote that he can perform light housekeeping but is limited when it comes to lifting weights greater than 10 pounds, which gives him chest pain. He wrote that he has cramps in his hands which affects his ability to do dishes and sweeping and he can only perform housekeeping for about a half hour before he has to rest. He has no issues with dressing except bending to tie his shoes.

### **Need for Help**

#### PR

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

#### AR

- The physician indicated the Appellant lives with family.
- The section for assistance provided by other people is blank, with the comment "None".
- A line was drawn through the section asking if help is required but there is none available, describe what assistance would be necessary.
- In the section asking what assistance is provided through the use of assistive devices, the physician wrote "None".
- The physician checked "no", the Appellant does not have an assistance animal.

#### Self-Report

The Appellant wrote that his family have been monitoring his sleep patterns.

2. The Ministry's Persons with Disabilities Designation Denial Decision Summary, dated May 2, 2016.
3. The Ministry's letter to the Appellant advising him of their decision, dated May 3, 2016.

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4. The Appellant's Request for Reconsideration, signed June 13, 2016, with a letter from the Appellant dated June 11, 2016, in which the Appellant wrote that he made mistakes filling out his PWD application, and should have reported that he can only climb 5 stairs, carry 5 lb for 2 minutes and sit for 2 hours, and that he has difficulty with housework and cooking, needing to take a break every half hour. He wrote that he has pain no matter what activities he does.

At the hearing, the Appellant stated that he takes a long time to do all activities of daily living, that he can perform them, but it takes a long time.. He stated that his physician has been unable to find the cause of his pain.

The Ministry stated that the denial of the Appellant's application was based on the information provided and the Appellant's physician indicated that he has few limitations, or there is no indication, and all DLA's are reported to be performed independently. There is no indication of a requirement for assistance. As a result, the application was denied based on the legislative criteria.

## 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 at the hearing and in his Request for Reconsideration that his chronic pain causes depression and anxiety.

#### *Ministry's 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. The ministry noted that the Appellant is reported to have no difficulties with communication, no significant deficits with cognitive and emotional functioning, good ability with all listed areas of communication, no impacts to cognitive and emotional functioning, no restrictions with social functioning and no limitations or restrictions with mental functioning.

#### *Panel's 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. There is no diagnosis of a mental impairment, no report of significant deficits with cognitive and emotional function and all aspects of social functioning are left blank, with the notation "N/A". 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 submission with his Request for Reconsideration and at the hearing, the Appellant argued that his application does not accurately reflect his condition. He argued that he has a great deal of pain that limits his ability to perform all activities.

#### *Ministry's position – Severe physical impairment*

The Ministry argued that a severe physical impairment has not been established because it is unknown how far the Appellant can walk unaided, unknown how many steps he can climb unaided, he is limited in lifting to 2 to 7 kg and he has no limitation with how long he can remain seated. The Ministry noted that the Appellant is not reported to require any aids for his impairment, and in the AR, there is no assistance required for any aspect of mobility or physical ability except heavy object lifting.

*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 do not confirm that the Appellant's impairment of physical functioning is severe. The functional limitations reported by the physician – unknown how far the Appellant can walk, unknown how many stairs he can climb, able to lift 2 to 7 kg and no limitation in sitting – do not indicate a severe impairment, as noted by the Ministry. In the AR, all aspects of mobility and physical ability are reported to be performed independently, with the notation "except heavy object lifting". 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*

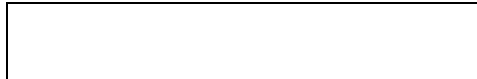
In his self-report and attachment to his Request for Reconsideration, the Appellant argued that his pain and shortness of breath limit his ability to perform DLA's. He argued that his hands lock up for periods of time when he uses them a lot. He wrote that housekeeping and cooking take a long time and he needs frequent breaks.

*Ministry's position*

The Ministry noted that the Appellant is not reported to be currently prescribed any medications or treatments that interfere with his ability to perform DLA's. The Appellant's physician reported that his impairment does not directly restrict his ability to perform DLA's and in the AR, the Appellant is reported to be independent with all listed areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. As noted by the Ministry, the physician's report indicates that the Appellant requires no prostheses or aids for his impairment. In the AR, the physician does not indicate that any assistance is required to perform any DLA. 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 people. The Ministry noted that the Appellant does not require an assistive device, the significant help of another person or the services of an assistance animal. The Ministry found that there is not enough evidence to confirm that the Appellant has a severe impairment that significantly restricts the Appellant's ability to perform DLA's continuously or periodically for extended periods.

*Panel's 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.



The Panel recognizes that the Appellant reports that he takes a long time to carry out some DLA's, however neither the Panel nor the Ministry found that the physician's information confirms significant restrictions to DLA's as a result of the Appellant's impairment. There is no report of a requirement for assistance by either the Appellant's physician or the Appellant himself. The Panel therefore finds that the Ministry reasonably determined the criterion for help under EAPWD s. 2(2)(b)(ii) was not met.

The Panel finds that the Ministry's reconsideration decision denying the Appellant's PWD application was reasonably supported by the evidence. The Panel therefore confirms the Ministry decision.

The Appellant's appeal is not successful.