

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 30, 2017 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 appellant's information and self-report dated February 14, 2017, a physician report (MR) and an assessor report (AR) dated February 21, 2017 and completed by a general practitioner (GP) who has known the appellant for more than 7 years and saw the appellant 11 or more times in the past 12 months prior to completing the PWD application.

Additional evidence consisted of:

- Medical reports printed February 21, 2017, which describes the appellant's allergies, history of prescriptions, history of medical conditions, surgical history and family history.
- Coronary angiogram instruction from a local hospital, which indicated that the appellant is scheduled for coronary angiogram on May 15, 2017.
- Questionnaire from said hospital.

The evidence also included the appellant's Request for Reconsideration dated May 11, 2017 which in part stated that :

- the GP minimized the major on-going problems.
- He can at times walk 4-5 blocks and do simple household tasks unassisted 2-3 times per day but is 'flattened/immobilized' by severe chest pain, gasping for breath, loss of feeling in arms and/or legs and unable to think clearly lasting 10 minutes to several hours.

Diagnoses

In the MR, the GP diagnosed the appellant with ASHD, CVA, Anxiety, Hypertension and Carotid stenosis all of which have an unspecified on-set date.

Physical Impairment

In the MR and AR, the GP reported:

- "on going chest pain. Under investigation".
- "chest pain limits activities"
- The appellant can walk 4+ blocks and climb 2-4 steps unaided, and lift under 5 lbs and remain seated with no limitations.
- 'daily chest pain with panic attacks. Persist [hypertension].
- The appellant is independent with walking outdoors (with the comment: 'short distances') and standing.
- The appellant requires periodic assistance with walking indoors with the comment: "Panics. Cannot move".
- The appellant requires continuous assistance with lifting with on comments.
- Carrying and holding was not assessed in terms of 'independent, periodic assistance, continuous assistance, uses assistive device or takes significantly longer'. However the comment: "light groceries" is stated.

In his self-report, the appellant stated in part that:

- He suffers from on-going heart disease, elevated blood pressure and that he had a stroke.
- He has had stents implanted.
- Blood pressure has risen despite medication.
- He experiences sudden heart pain/palpitations and difficulty breathing with any amount of physical exertion – as minimal as walking to the store or even moving around the kitchen when making dinner.
- Lately these conditions exist even when not moving at all or lying down.

Mental Impairment

In the MR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of executive function, emotion and impulse control.
- He is restricted periodically in the area of social functioning with ability to develop and maintain relationships (with the comment :”long standing relationships”) .
- In terms of communication, the appellant’s reading, speaking, hearing and writing is good.
- In terms of cognitive and emotional functioning, the GP reported major impacts to emotion, impulse control, psychotic symptoms and other neuropsychological problems; moderate impacts to bodily functions consciousness, and insights and judgement; and ‘minimal impact’ and/or ‘no impact’ for the remaining listed items in this category. The GP adds :”very anxious regarding health”.
- Under paying bills/rent and medications all listed items are indicated as independent with the exception of ‘pay rent/bills’, which is indicated as ‘needs continuous assistance’. The GP has not explained why the appellant needs help in this area.
- Under social functioning the appellant is independent with all listed items except ‘able to develop and maintain relationships’ (with the comment: “long standing relationships”) and ‘able to deal appropriately with unexpected demands’ (with the comment: “panics”), which are indicated to require periodic assistance. Immediate and extended social networks are indicated as marginal functioning. The GP adds: “needs someone one to live with him” and “cannot live alone”.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant is prescribed medication and/or treatments that interfere with his ability to perform DLA, and added the comment: “on going chest pain limits his activity”.
- The appellant independently performs all of his DLA except: transfers in/out of a chair which takes significantly longer (with the comment: “panics”; laundry and paying rent/bills which require continuous assistance; and meal planning, food preparation, basic housekeeping and going to/from stores (with the comment: “2 blocks ok”), which require periodic assistance.

Need for Help

With respect to the assistance provided by other people, the GP reported that the appellant receives help from friends without indicating what that help is or how often. The GP indicated that the appellant does not use any assistive device or animal, and does not require a prostheses or aid for his impairment. The GP added: “may need CPAP machine”.

In his self-report, the appellant did not argue that he requires assistance from another person, animal or device.

Evidence on Appeal

In his Notice of Appeal (NOA) dated May 30, 2017, the appellant stated that alternative treatments have failed. He is now awaiting full open-heart surgery as order by his specialist physician.

Evidence at the Hearing

At the hearing the appellant submitted the following:

- Angiographic Report dated May 15, 2017.
- The business card of a physician.
- 2-page Surgical Day Care instructions.

At the hearing the appellant's witness stated, in part, the following:

- Over the past 3 years the appellant's medical condition has worsened and deteriorated.
- The appellant has had 2 stent procedures during this time.
- The appellant has limited activity; he cannot walk more than 3 blocks.
- The witness helps with the use of transit and grocery shopping.
- The appellant's breathing is labored; there has been a long process of decline and the appellant cannot work.
- The witness helps with paying rent.

At the hearing the appellant stated, in part, the following:

- He had a stroke 3.5 years ago and though he recovered he is not getting better and is not functional.
- Now the doctors at the hospital think the same and will perform surgery.
- It is expected that there will be some recovery from the surgery for the heart but there is no remedy for the arteries in the neck, which lead to the initial stroke and pose a continued risk of stroke.
- Both of his parents passed away from the same medical condition at about his current age.
- His physician minimized the impact of his medical condition on his ability and DLA in the PWD application.
- He felt better 6 months ago so the functional skills in the PWD application may be accurate but that is no longer the case as his medical condition has worsened/declined since then.
- He always carries with him aspirin to chew, always experiences chest pain and shortness of breath. The past 6 months have been the worst.
- The physician of internal medicine and sleep disorders advised the appellant that he is at risk of an imminent heart attack and on June 16, 2017, advised him to immediately go to the hospital.
- He does not have a new assessment from either the GP or any specialist.
- He does not agree with the GP's assessment of his mental health. He does not panic but does worry about his health as he can die. He does have anxiety but it is not treated with medication.
- The strain on his heart is unpredictable and the GP did not explain the severity of the situation in the PWD application.

At the hearing the ministry relied on its reconsideration decision.

Admissibility of Additional Information

The ministry did not object to the admissibility of the appellant's submissions at the hearing.

The panel considered the information from the appellant's submission as being in support of, and tending to corroborate, the medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this oral testimony 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 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 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 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 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse 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).

The EAPWDR provides 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.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. 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 or for a reasonable duration. 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.

The ministry noted that the appellant's functional skills are indicated as he can walk 4+ blocks unaided, climb 5+ steps unaided, lift under 5lbs and remain seated with no limits and determined that the appellant's abilities as described are not indicative of a severe impairment of physical functioning. It also noted that, in the AR, the GP indicated that the appellant is independent with walking outdoors and standing. Walking indoors requires periodic assistance from another person (with the comment 'panics, cannot move'), lifting requires continuous assistance from another person and carrying/holding only has the comment 'light groceries' with no indication as to whether or not this task is performed independently or requires either periodic or continuous assistance from another person. The ministry noted that the GP did not provide a description of the frequency and duration of the periodic assistance required with walking indoors and the comment 'panics, cannot move' is not indicative of a physical impairment.

The ministry further notes that, in the AR, the GP indicated that the appellant avoids stairs but in the MR the GP indicated that the appellant can climb 5+ steps unaided. The ministry's conclusion was that given the evidence of the appellant's functional skills, mobility and physical abilities, as presented by the GP and in the appellant's self-report, a severe impairment of the appellant's physical functioning was not established. At the hearing the appellant described that severity of his medical condition and stated that since the PWD application his condition has worsened. The appellant stated that at the time of the PWD application his functional ability was as indicated by the GP. That is he could walk 4+ blocks and climb 2-4 steps unaided.

Section 2(2) of the *EAPWDA* requires that the minister must be satisfied that a person has a severe mental or physical impairment that results in significant restrictions to a person's ability to function independently or effectively. The evidence given by the GP indicates that the appellant's functional ability is moderate and there is insufficient evidence to determine that the appellant requires significant help. When the evidence from the GP is considered collectively, the panel finds that it is reasonable for one to conclude that the evidence does not support a finding of a severe physical impairment.

After reviewing the evidence provided by the GP and appellant, the panel finds that the ministry was reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe physical impairment as provided by section 2(2) of the *EAPWDA*.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry noted that in the MR, the GP diagnosed the appellant with anxiety, indicated that there are no difficulties with communication, there are significant deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance and impulse control and comments 'panic'. The ministry noted that in the AR the GP indicates no impact to executive functioning. The ministry noted that in the MR the GP does not indicate significant deficits to psychotic symptoms but in the AR indicates a major impact to this specific area of cognitive and emotional functioning. The ministry further noted that the GP's comment 'panic' next to disorganized thinking is not due to psychotic symptoms. The ministry also noted that in regards to social functioning, there are items that require periodic assistance but the GP has not indicated the frequency or duration of the assistance required and that the appellant has marginal functioning with immediate and extended social networks. The ministry concluded that though the appellant experiences limitation to his cognitive and emotional functioning due to anxiety, a severe mental impairment has not been established.

The panel notes that the GP has not provided a diagnosis that would incite psychotic symptoms. At the hearing the appellant stated that his GP's assessment of his mental health was incorrect and that he does not panic about his medical conditions but does worry about them. He further added that he is not prescribed medication for his anxiety.

Section 2(2) of the *EAPWDA* requires that the minister must be satisfied that a person has a severe mental or physical impairment that results in restrictions to a person's ability to function independently or effectively. The evidence given by the GP indicates good overall mental functioning, provides incompatible information regarding executive functioning and psychotic symptoms, and provides insufficient information regarding the frequency and duration of the assistance the appellant requires. When the evidence of the GP is considered collectively, the panel finds that it is reasonable for one to conclude that the evidence does not support a finding of a severe mental impairment.

After reviewing the evidence provided by the GP and appellant, the panel finds that the ministry was reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe mental impairment as provided by section 2(2) of the *EAPWDA*.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. According to the legislation, Section 2(2)(b) of the *EAPWDA*, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments 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 reconsideration decision, the ministry reviewed the information provided in the MR and noted that the GP indicated that the appellant has been prescribed medication that would interfere with his ability to perform DLA. However the GP did not describe the medication or treatment. Furthermore, the ministry notes that the GP comments "on going chest pain limits his activity" without describing the activities limited by pain or the nature of the limitations.

The ministry noted that in the AR the GP does not describe the frequency and/or duration of the periodic assistance required for basic housekeeping, going to/from stores, meal planning, and food preparation. The ministry also notes that the GP indicates that the appellant is independent with the majority of the DLA listed. The ministry did not address the fact that the appellant requires continuous assistance with laundry and that transfers on/off a chair takes significantly longer. The ministry concluded that it is difficult to establish significant restrictions to the DLA based on the assessment of the GP and there is not enough evidence to confirm that a severe impairment significantly restricts the appellant's ability to perform his DLA continuously or periodically for extended periods.

The panel notes that the additional evidence provide at the hearing did not address the impact on DLA. Section 2(2) of the *EAPWDA* requires that the minister must be satisfied that a severe mental or physical impairment results in significant restrictions to a person's ability to perform his or her DLA continuously or periodically for extended periods. The evidence given by the GP indicates that the appellant's independently performs the majority of this DLA and there is lack of evidence regarding

the frequency and duration of the assistance he does require. When the evidence is considered collectively, the panel finds that it is reasonable for one to conclude that the evidence is insufficient to demonstrate that the appellant's DLA are restricted continuously or periodically for extended periods.

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

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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.

The panel notes that in the MR the GP has indicated 'No' to the need for any prostheses or aids for the appellant's impairment. In the AR the GP indicated that the appellant receives assistance from 'friends' and that he does not use an assistive device or animal. The GP did indicate that the appellant "may need CPAP machine".

Given the GP's evidence in its entirety, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, and therefore also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.