

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 8, 2017 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. 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’s impairment is likely to continue for at least two years; and
- 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 signed by the Appellant on February 12, 2017, a Medical Report (MR) undated and an Assessor Report (AR) dated January 17, 2017, both completed by the same physician. In the MR, the physician reported that the Appellant has been his patient for approximately 12 months, and that he has seen him 2 to 10 times in the past 12 months. The Appellant completed a self-report.

The PWD application included the following information:

Diagnosis

MR

In the MR, the Appellant's diagnosis was reported as complex regional pain syndrome of right extremity with an onset date of January, 2016.

Self-Report

The Appellant described his condition as chronic twitching/shaking and pain in the right arm. He wrote that he has shooting and burning pain from the right side of his neck to the wrist, and that his pain and symptoms have gotten worse over the past year.

Degree and Course of Impairment

MR

The physician ticked *NO* to the question "Is the impairment likely to continue for two years or more from today?", with the comment "Unknown – has been 12 months already, is possible may last more than 2 years".

Functional Skills

MR

The physician provided the following information regarding any functional limitations:

- The Appellant can walk 4+ blocks unaided;
- Climb 5+ steps unaided;
- Lift under 2 kg with a notation "R hand";
- Remain seated without limitation;
- Has no difficulties with communication (other than lack of fluency in English);
- Has significant deficits with cognitive and emotional function in the area of Emotional disturbance with a comment "His injury has caused him emotional changes and frustration".

AR

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

- Ability to Communicate: Speaking, Reading, Writing and Hearing are good.
- Mobility and Physical Ability: walking indoors and outdoors, climbing stairs and standing, lifting and carrying and holding are reported to be independent, with a comment "Will use opposite arm for lifting/daily activities".

The physician reported the following impacts for the 14 areas of Cognitive and Emotional Functioning:

No impact in 12 areas: bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. Minimal impact in emotion and motivation.

Self-report

The Appellant reported that he does not have much grip in his right arm and no grip at all when his arm is twitching or shaking and since his injury he suffers from anxiety and depression.

Daily Living Activities (DLA)

MR

The physician checked Yes, the Appellant has been prescribed medication/treatment that interferes with his ability to perform DLA, with the comment "Tylenol 3 and Lyrica can cause him drowsiness".

AR

Personal Care

The Appellant is independent in all aspects.

Basic Housekeeping

The Appellant is independent in all aspects.

Shopping

The Appellant is independent in all aspects.

Meals

The Appellant is independent in all aspects.

Pay Rent and Bills

The Appellant is independent in all aspects.

Medications

The Appellant is independent in all aspects.

Transportation

The Appellant is independent in all aspects.

Social functioning

- All aspects, appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others are independent. The Appellant has good functioning with immediate and extended social networks.

Self Report

The Appellant wrote that he is able to perform his daily routine but usually not on a regular schedule due to pain, dizziness and headaches caused by pain in arm/neck/wrist and medications.

Need for Help

MR

- The physician reported No, the Appellant does not require any prostheses or aids for his impairment.
- Under Additional comments (*relevant to understanding the significance of the person's medical condition*), the physician wrote "Patient had fall injury to R wrist/shoulder during Jan 2016. Developed swelling and pain and limited range of motion of R arm and shoulder. He had negative x-rays, multiple visits with orthopedic surgeon and neurology and physical medicine rehab physician without any identifiable cause. His current diagnosis is complex regional pain syndrome. He still suffers from chronic pain in his R wrist and shoulder with extensive weakness with use."

AR

- The physician reported that assistance is provided by family.
- The section asking if help is required but there is none available is left blank. Assistance provided through the use of assistive devices is blank.
- Assistance provided by assistance animals is marked *No*.

Self Report

The Appellant did not specifically address the need for assistance.

2. The Ministry's Persons with Disabilities Designation Decision Summary, dated April 3, 2017.
3. The Ministry's letter to the Appellant advising him of their decision, dated April 3, 2017.
4. The Appellant's Request for Reconsideration, signed May 10, 2017.

The Appellant submitted the following documents to the Panel:

1. A letter outlining his physicians and medications.
2. A copy of a report from a physical medicine specialist dated September 19, 2016 which states the medications prescribed to the Appellant and treatments.
3. Copies of 5 prescriptions.
4. A Copy of a referral form for physiotherapy dated July 12, 2017.

The Ministry had no objection to the admission of these documents. The Panel admitted the documents under section 22(4) of the Employment and Assistance Act as written testimony in support of the information that was before the minister at reconsideration as they are generally in support of statements made by the Appellant in his PWD application and subsequently.

At the hearing, the Appellant stated that he worked in the North in small communities, but his injury has made this impossible. He stated that his condition has worsened since he was injured, and he has been prescribed more medications, some of which have side effects affecting his mood and ability to sleep. He stated that he has to hold one hand with the other to steady it due to shaking. He stated that he is not able to work or to sit at a computer. Physiotherapy and massage have been recommended.

The Ministry stated that their decision was based on the information provided by the Appellant and his physician, and the Appellant met one of the five criteria for approval of PWD designation.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision to deny the Appellant's application for PWD designation 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. 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's impairment is likely to continue for at least two years; and
- 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.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

(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 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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in section 2 of the EAPWDR:

Definitions for Act

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;

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.

Impairment likely to continue for at least two years

The Ministry noted that the Appellant's physician checked "No" in answering this question. The Appellant did not directly address the duration of his impairment, but stated that it has lasted 18 months with no sign of relief. The Panel notes that the physician stated that the impairment "may last more than two years"; however as he did not indicate that it is likely to continue for at least two years, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirement of section 2(2)(a) of the EAPWDR.

Severe physical or mental 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 in 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 the 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 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, the physician.

Appellant's position - Severe physical impairment

The Appellant's position is that he has continuous shooting pain in his shoulder and neck that causes his arm to shake constantly. He stated that he has to take medications to calm his nerves and reduce his pain, and that they cause stomach bleeding. He argued that the assessment of his functional skills does not take into account the fact that he has to use his left arm to control the right.

Ministry position – severe physical impairment

The Ministry's position is that the physician's assessment of physical functional skills indicates that the Appellant is able to walk 4+ blocks unaided, climb 5+ stairs unaided, lift under 5 pounds with his right hand and has no limitations remaining seated, and that this level of functioning does not establish the presence of a severe physical impairment. In addition, the Ministry noted that the Appellant's physician that he is independent in performing all physical activities listed and all physical activities of daily living listed in the AR.

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. As argued by the Ministry, the Appellant's physician reported that he is independent walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding with the use of his left arm, as well as being independent in performing all DLA involving physical activity.

Appellant's position - Severe mental impairment

The Appellant's position is that he suffers from anxiety and depression since his accident.

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 by the physician. The physician did not diagnose any mental impairment and other than significant deficit in emotional disturbance which is reported to be as a result of his injury, the Appellant is reported to have minimal impacts in cognitive and emotional functioning in the areas of emotion and motivation, the assessment of social functioning does not establish that he experiences any restrictions in relating to, communicating or interacting with others.

Panel 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. In addition to no diagnosis of a mental impairment, the Appellant's physician has not indicated any significant impacts of a mental impairment on daily functioning.

Significant Restrictions in the ability to perform DLA

Appellant's position

The Appellant argued that he is able to perform his daily routine, but usually not on a regular schedule due to pain, dizziness and headaches. He argued that he shakes most of the time, and needs to control one arm with the other and needs to rely on his children to help.

Ministry's position

The ministry's position is that the information provided does not establish that the Appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods. The Appellant's physician indicated that he is able to perform all aspects of all DLA independently.

Panel decision – Restrictions to DLA

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 either continuously or periodically for extended periods. In this case, the Appellant's physician is the prescribed professional. DLA 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 are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods.

The Panel notes that the Appellant's physician ticked "NO" in the MR in reply to the question "Does the impairment directly restrict the persons' ability to perform Daily Living Activities?" and indicated in the AR that the Appellant is able to perform all listed aspects of DLA independently. Considering the degree of independence reported, the Panel finds that the Ministry reasonably determined that the evidence provided is insufficient to determine that the Appellant's ability to perform DLA is significantly restricted either continuously or periodically for extended periods as required by EAPWDR section 2(2)(b).

Help to perform DLA

Appellant's position – Help with DLA

The Appellant argued that he needs to rely on his children to complete DLA.

Ministry's position – Help with DLA

The Ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

Panel decision – Help with DLA

The AR indicates that the Appellant does not require any prosthesis or aids and that his physician wrote that he is able to perform his DLA, but if help is required he has help from his family. Although the panel notes that the Appellant may require periodic help with some tasks, a finding that a severe impairment directly and significantly restricts a person's ability to manage his DLA either continuously or periodically for an extended

period is a precondition to a person requiring help as defined by section 2(3)(b) of the EAPWDA.

As the panel finds that the Ministry was reasonable in determining that the Appellant does not have a severe impairment that directly and significantly restricts his ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition is not satisfied. Accordingly, the panel finds that the ministry's decision that the Appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was reasonable.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in his appeal.