

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 27 June 2017, which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds. The ministry further determined that the appellant did not meet all of the required criteria for PWD designation as set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2.

Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or severe physical impairment; that a severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; or that as a result of those restrictions, the appellant requires help to perform those activities.

The ministry found that the information provided did establish that the appellant has reached 18 years of age and his impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

## 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 reconsideration consisted of the following:

- The appellant's **PWD Application**. The Application contained:
  - A Medical Report (MR) dated 13 February 2017, completed by the appellant's general practitioner (GP) who has known the appellant since 2014 and seen the appellant 11 or more times in the past 12 months.
  - An Assessor Report (AR) dated 23 February 2017, completed by a nurse who had seen the appellant once in the past 12 months.
  - A Self Report (SR) dated 26 January 2017, signed by the appellant and indicating that he needed help with English to complete the application.
- A letter from the appellant's GP dated 10 November 2016, stating that the appellant suffers from "permanent severe and prolonged condition, which prevents him from working."
- CT scan report dated 6 July 2015, indicating a normal study one year post right pulmonary AVM embolization.
- Medical History Summary dated 13 February 2017 from the GP's office, which includes a current problem list, medication list, surgical history, and consultations.
- A letter from the appellant's representative to the GP thanking him for filling out the MR section of the PWD application.
- A **Request for Reconsideration** (RFR) dated 13 June 2017, signed by the appellant.

The panel will first summarize the evidence from the PWD Application as it relates to the PWD criteria at issue in this appeal.

### **Diagnoses**

In the PR, the GP diagnoses the medical conditions related to the appellant's impairment as:

- Osler Rendu – onset 2014
- Epitaxis – onset 2014
- Hyperemia - onset 2014
- Anxiety – onset 2016

### **Severity of mental impairment**

MR:

The GP has provided a diagnosis of anxiety onset 2016.

The GP indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has significant deficits with cognitive and emotional functioning in the area of emotional disturbance.

AR:

The nurse assesses the appellant's ability to communicate as good in the areas of speaking, reading, writing and hearing and provides the comment: *very limited English*.

The nurse assesses the appellant's cognitive and emotional functioning as having major impacts in the areas of emotion, attention/concentration, executive and memory. Moderate impacts are assessed in the areas of bodily functions, consciousness, impulse control and insight and judgment. The remaining areas of cognitive and emotional functioning have not been assessed in the AR.

The nurse indicates that the appellant has good functioning in immediate and extended social networks and provides the comment: *severe bleeding is the issue that limits his going out and all his activities.*

SR:  
The appellant indicates that he experiences extreme anxiety and depression. He states that he worries that he may have an episode of uncontrolled nose bleeding at any time. As well, the information provided with the SR indicates that the appellant's family says that his condition causes him to feel depressed - unable to provide for the family, family history of dying young from the same condition.

### **Severity of physical impairment**

MR:

The GP has indicated that the appellant suffers from Osler Rendu, Epitaxis and Hyperemia.

Under Health History, the GP writes:

1. *Epitaxis and Hyperemia unable to work in kitchen 1) heat; 2) uncontrolled bleeds*
2. Illegible

For functional skills, the GP indicates that the appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided and can remain seated without limitation. The GP has indicated that the appellant's limitations with lifting are unknown.

The GP indicates that the appellant does not require any aids or prostheses.

AR:  
The nurse assesses the appellant's mobility and physical ability as independent for walking indoors, walking outdoors, climbing stairs (*very slow*) and standing. The appellant is assessed as requiring continuous assistance from another person or unable in relation to lifting and carrying and holding. The nurse has provided the comment: *has malformation of blood vessels in his lungs making very poor oxygen supply and low energy.*

SR:  
The appellant explains that Osler Rendu disorder affects large and small blood vessels and has affected his nose and lungs so far. He states that the condition may also go on to affect his skin, stomach, intestines, brain and liver. He states that he has been unable to work since January 2016 and uncontrolled bleeding can come on at any time; cauterization and laser treatments have not helped. He states that he also has shoulder, arm and back issues. He explains that attempts to work worsen his condition. He is incapable of doing anything except catch the flow of blood during the episodes of uncontrolled nose bleeding, which can happen at any time, and his family must help him. His family helps by getting a bucket and towel to catch the blood as well as washing the towel for him, getting a chair so he can sit, getting frozen packs to place on his eyes and nose and helping him to clean up. He states that there is lung involvement in this disease and his doctor has told him that the malformations present on his nose are also present in his lungs. The information provided with the

SR describes a need for the appellant to keep his vessels calm by avoiding high temperatures, heavy lifting and too many simultaneous tasks, as these actions cause vessel dilation are likely to lead to greater than usual night bleeding. If the appellant needs to meet someone he must get up 30 minutes early to clean up from night bleeds.

### **Ability to perform DLA**

#### **General**

MR:

The GP indicates that the appellant has not been prescribed medication that interferes with his ability to perform DLA,

#### **Section 2(1)(a) DLA**

##### *Prepare own meals*

MR:

The GP indicates that the appellant's ability to perform meal preparation is not restricted.

AR:

The nurse indicates that the appellant requires continuous assistance or is unable in relation to meal planning, meal preparation and cooking. Safe storage of food has not been assessed.

##### *Manage personal finances*

MR:

The GP indicates that the appellant's ability to manage finances is not restricted.

AR:

The nurse indicates that the appellant requires continuous assistance or is unable in relation to all pay rent and bills activities (budgeting, banking and pay rent and bills).

##### *Shop for personal needs*

MR:

The GP indicates that the appellant's ability to perform daily shopping is not restricted.

AR:

The nurse indicates that the appellant requires continuous assistance or is unable in relation to all shopping activities, including: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home.

##### *Use public or personal transportation facilities*

MR:

The GP indicates that the appellant is not restricted with use of transportation.

AR:

The nurse indicates that the appellant is independently able to get in and out of a vehicle but requires continuous assistance or is unable in relation to using public transit and using transit schedules or arranging transportation (*totally unable*).

##### *Perform housework to maintain the person's place of residence*

MR:

The GP indicates that the appellant's ability to perform basic housework is not restricted.

AR:

The nurse indicates that the appellant requires continuous assistance or is unable in relation to laundry and basic housekeeping.

*Move about indoors and outdoors*

MR:

The GP indicates that the appellant is not restricted with mobility inside the home and mobility outside the home.

AR:

The nurse indicates that the appellant is independent with walking indoors and outdoors, climbing stairs (*very slow*) and standing.

*Perform personal hygiene and self-care*

MR:

The GP indicates that the appellant is not restricted with personal self care.

AR:

The nurse indicates that the appellant is independent with the following personal care activities: dressing (*not when he is bleeding*), grooming, bathing, toileting, feeding self, and regulating diet and transfers on/off chair. The nurse has not assessed transfers in/out of bed but provides the comment: *knees very painful*.

*Manage personal medication*

MR:

The GP indicates that the appellant is not restricted with management of medications.

AR:

The nurse indicates that the appellant requires continuous assistance or is unable in all medications activities (filling/refilling prescriptions, taking as directed and safe handling and storage).

**Section 2(1)(b) DLA**

The following DLA are applicable to a person who has a severe mental impairment:

*Make decisions about personal activities, care or finances*

MR:

The GP indicates that the appellant is independent with personal self care, daily shopping, meal preparation, management of medications, use of transportation, management of finances and social functioning.

AR:

The nurse indicates that the appellant requires periodic assistance or is unable with: all shopping DLA; all meals DLA, except safe storage is not assessed; all pay rent and bills DLA; all medications DLA; and the transportation DLA of using transit schedules and arranging transportation. All social functioning DLA have been assessed as independent as have all personal care activities, except for transfers in/out of bed.

*Relate to, communicate or interact with others effectively*

MR:

The GP indicates that the appellant has no difficulties with communication.

AR:

The nurse assesses the appellant's ability to communicate as good for all areas, including speaking, reading, and hearing and writing.

The nurse indicates that the appellant is independent in all social functioning DLA (appropriate social decisions (*friends who speak his language*), able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others) and has good functioning in his immediate and extended social networks.

Help required

MR:

The GP indicates that the appellant does not require an aid or prosthesis for his impairment and the assistance required to perform DLA is "N/A".

AR:

The nurse indicates that help is provided by family and friends with the comment: *family and friends help him constantly, he is unable to go out alone*. The nurse indicates that the appellant does not receive assistance from assistive devices or assistance animals. In response to a prompt for equipment that is required but not currently being used, the nurse writes: *needs compression stockings*.

**Notice of Appeal**

In his Notice of Appeal (NOA) dated 13 July 2017, the appellant gives as Reasons for Appeal:

1. *I have a severe physical impairment. I need help with daily living activities.*
2. *Dr. [omitted] indicates this in his letter. Also Dr. [omitted].*
3. *Have included Drs. Letters taken to MSDSI in [appellant's community] June 5, 2017 (not included in R4R).*
4. *Moving for Aug 7/17.*
5. *Phone number most likely to change.*
6. *Advocate's contact information.*
7. *Wonder why Drs letters weren't included in R4R package?*
8. *Will transfer file [...] to [omitted] when we move.*
9. *Have attached Drs notes that were submitted to [ministry office in appellant's community] on June 5, 2017.*

Included with the appellant's NOA were 2 letters:

- A letter dated 8 May 2017 from a specialist, which explained that the appellant suffers from a hereditary genetic condition associated with abnormal blood vessel formation. When these occur in the brain and lungs they can be catastrophic and in some cases lead to death. The specialist explained that the lesions can occur in other systems as well and there are often multiple cutaneous lesions. The specialist explained that he often sees patients with this condition because of nasal lesions, which can cause mild or catastrophic bleeds requiring emergency treatment. The specialist states that he supports the appellant's application for permanent disability because the condition is a severe chronic disability that worsens with age. He explains that it is difficult for patients with this condition to work at a regular job because of severe intractable daily nosebleeds that are unpredictable and can result in a lot of blood loss in a short period, which is dangerous because it leads to chronic low hemoglobin.
- A letter dated 2 June 2017 from the appellant's GP stating that the appellant has an incurable hereditary genetic disease that will affect him for the rest of his life. There are surgical corrections available for some of the bleeding episodes. The appellant may be well for a while and then start bleeding from a day to weeks or months. *Every time he bleeds he will require*

*medical assistance and would not be able to work. He would then require support home and ongoing therapy/monitoring.*

### **The hearing**

The appellant's representative spoke on the appellant's behalf during the hearing. She explained that both she and the doctors agree that the appellant does have a serious condition; it is a rare inherited blood disorder affecting blood vessels throughout the body. He has 3 or more nosebleed episodes each day that last 15-30 minutes each and is incapacitated during these episodes. If the bleeding does not stop on its own he will have to attend the hospital. The episodes leave him weak, fatigued, anemic and with a poor memory. He is very worried as the episodes can happen at any time. His [parent] also had this condition and died at his age and this causes the appellant to be depressed and anxious. Other members of the appellant's family also have this condition. The appellant's representative then described pictures of the appellant that she states were submitted to the ministry on June 5, 2017. The appellant's representative explained that these pictures show a lesion on the side of the appellant's nostril and swollen legs with pitting edema.

The appellant's representative explained that this condition worsens with age and the bleeds will eventually come on with little or no provocation. She stated that the appellant did work until January 2016 and then accessed medical EI until June 2016; he did not apply for regular EI but did apply for income assistance. She explained that the appellant's condition is episodic and happens on a daily basis, he is fine at times but debilitated at other times and requires continuous assistance at these times. He has had some treatments for his condition but there is no cure.

The ministry relied on the reconsideration decision.

### **Admissibility of new information**

The panel notes in considering the admissibility of the two doctors' letters provided with the Notice of Appeal that there is some disagreement about whether these letters were available at reconsideration. The appellant's advocate stated that the appellant's daughter dropped off the letters at the local ministry office on June 5, 2017, along with the photographs described at the hearing. The ministry stated that it did not see the letters in the file at reconsideration and they are not with the original or reconsideration packages. The ministry's position is that the NOA is the first time it has seen the letters.

The panel finds that the information provided in the appellant's Notice of Appeal, including the letters from the doctors, as well as the information provided by the appellant's representative at the hearing consist of elaboration and explanation of the information that was before the ministry at reconsideration, and this information is therefore in support of the information and records before the ministry at reconsideration. The panel admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that:

- the appellant has a severe mental or severe physical impairment;
- the appellant's severe mental or physical 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 those restrictions, he requires help to perform those activities.

The following section of the EAPWDR applies to this appeal:

**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 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 following section of the EAPWDR applies to this appeal:

**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.

### **Severity of impairment**

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The determination of severity is at the discretion of the minister, considering all the evidence, including that of the appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment. An impairment is a loss or abnormality of psychological, anatomical or physiological functioning causing restriction in the ability to function independently, appropriately, effectively or for a reasonable duration.

#### Severity of mental impairment

In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe mental impairment. The ministry first noted that GP reports a significant deficit with anxiety and no other significant deficits in other areas of cognitive function. The ministry then considered that the nurse assessed major impacts with emotion, attention/concentration, executive and memory and moderate with bodily functions, consciousness, impulse control and insight and judgment. The ministry found that it is unclear why the nurse reports such a significant impact when the appellant's long-term physician only reports significant deficit in the area of emotion. The ministry concluded that due to the discrepancy, it was unable to find that a severe mental impairment had been demonstrated. The appellant's representative argued that the GP has not fully appreciated the appellant's depression but does touch on this and has prescribed medication.

The panel notes that the assessments of cognitive and emotional functioning provided in the MR and the AR do not align, except in relation to a deficit with cognitive and emotional function in the area of emotional disturbance/emotion. The panel notes that the GP has provided a diagnosis of anxiety, onset 2016. The panel observes the appellant's assertion of depression in the SR and at the hearing but notes that a medical practitioner has not provided a diagnosis of depression. The panel concludes that the ministry's determination that a severe mental impairment had not been demonstrated was reasonable.

#### Severity of physical impairment

The ministry determined that, based on the information provided, the appellant does not have a severe physical impairment. In making this determination, the ministry considered the functional skills assessed by the GP in the MR and the nurse in the AR, noting that the GP indicates appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided and can remain seated without limitation; limitations with lifting are unknown. The nurse indicates the appellant is independent with

walking, climbing stairs and standing but is very slow climbing stairs. The nurse indicates that the appellant requires continuous assistance with lifting, carrying and holding. The ministry finds that it is unclear why the nurse assesses a requirement for continuous assistance when the physician reports no functional impairments or restrictions. The ministry has stated that it gives greater weight to the information provided by the physician as he has seen the appellant 11 or more times in the past 12 months and the nurse has met with the appellant once. The ministry also considered the appellant's diagnoses, treatment history, medications and self report. The ministry concluded that the appellant does not have a severe physical impairment and that a restriction with heavy lifting would not represent a severe overall physical impairment to the appellant's ability to function independently or effectively.

The appellant argues in the NOA that he does have a severe physical impairment. At the hearing the appellant's representative argued that the appellant does have a severe condition and it is getting worse with age. She also argued that the letters provided with the NOA support this and should supersede the 'tick boxes'. The appellant's representative also took issue with the ministry's statement that it gives greater weight to the information provided by the GP than the nurse. The appellant's representative argued that the nurse had completed a more in depth assessment, taking more time with the appellant. She argued that while the GP had seen the appellant more frequently, these visits were often very quick.

The panel notes that while the ministry has given greater weight to the GP's assessment, the ministry has also concluded that the presence of a restriction with heavy lifting would not represent a severe overall physical impairment to the appellant's ability to function independently or effectively. The panel notes that the letters provided with the NOA both speak to the presence of a serious medical condition that prevents the appellant from working. However, as noted by the ministry, employability is not a consideration for eligibility for PWD designation because 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. The panel finds that the ministry's determination that a severe physical impairment has not been established is reasonable.

### **Direct and significant restrictions in the ability to perform DLA**

The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional. In this case the GP and nurse are prescribed professionals. At issue is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR applicable to a person with a severe mental or physical impairment. The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion not established in this appeal.

In the reconsideration decision, the ministry found that the information from the appellant's prescribed professional did not establish that the appellant's impairment significantly restricts his ability to perform DLA continuously or periodically for extended periods. The ministry noted that the GP had assessed the appellant as independent with all DLA and all areas of social functioning. The ministry notes the GP's comments that the appellant avoids public places and had worked in a restaurant kitchen. The ministry went on to consider the nurse's assessment of DLA, noting that the appellant is reported to be independent with personal care, except when bleeding, and social functioning but requires continuous assistance with basic housekeeping, shopping, meals, paying bills, medications, and public transportation. The ministry acknowledged that the appellant suffers from a bleeding disorder with severe bleeds and has anxiety as a result, but notes that the GP reports that this medical condition does not impact DLA. The ministry finds that it is unclear why the nurse reports that the appellant requires continuous assistance in so many areas when the GP reports he is

independent. The ministry further notes the absence of explanation by the nurse in the AR as to the degree of support required on a daily or weekly basis as requested in the application. The ministry concluded that it could not be established that the appellant has an impairment that directly and significantly impacts his ability to perform DLA continuously or periodically for extended periods.

The appellant's representative argued at the hearing that the appellant's ability to perform DLA is affected, as he cannot do anything during bleeding episodes. During these episodes, the appellant's representative argued, he requires constant help. The appellant's representative explained that these episodes happen approximately 3 times per day every day and last 15-30 minutes each.

The panel notes the significant inconsistency and conflict reflected in the MR and AR assessments of the appellant's ability to perform DLA. The panel notes that the MR information indicates that the appellant is independent in all areas, while the AR indicates that the appellant is independent in some areas but requires continuous assistance in other areas. The letters provided with the NOA do not speak directly to the appellant's ability to perform DLA. The panel notes that the appellant's representative provided some clarification at the hearing in relation to the frequency and duration of the appellant's bleeding episodes and explained that he cannot do anything during these episodes. The panel notes that the legislation requires that the direct and significant restrictions of DLA be in the opinion of a prescribed professional, in this case the GP and the nurse. As such, the panel concludes that the ministry reasonably concluded that this criterion has not been met.

### **Help 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. 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, significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the reconsideration decision, the ministry found that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The appellant argues in the NOA that he requires help to perform DLA. As well, the appellant's advocate argued at the hearing that the help the appellant requires is constant assistance from family during bleeding episodes. However, the panel notes that the required assistance described during bleeding episodes does not reflect help with DLA.

The panel notes that the GP has indicated in the MR that the appellant does not require an aid or prosthesis for his impairment and the assistance required to perform DLA is "N/A". In contrast, the nurse has indicated in the AR that help is provided by family and friends (*family and friends help him constantly, he is unable to go out alone*). The nurse indicates also that the appellant does not receive assistance from assistive devices or assistance animals but needs compression stockings.

The panel notes that the need for help criterion is a contingent criterion in that it requires that direct and significant restriction in the ability to perform DLA be established. As the panel has found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the precondition has not been met. As a result, the panel also finds that the ministry 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, was a reasonable application of the legislation in the appellant's circumstances and was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.