

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 7 February 2018, which determined that the appellant was not eligible for persons with disabilities designation (PWD) because he had not met all of the legislated criteria under section 2 the *Employment and Assistance for Persons with Disabilities Act*. The ministry determined that the appellant had demonstrated that he 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. The ministry further determined that the appellant had not demonstrated that he has a severe mental or 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; nor that as a result of direct and significant restrictions, he requires help to perform those activities.

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

Evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated 21 October 2017, completed by the appellant's general practitioner (GP) who has seen the appellant 2-10 times in the past 12 months and known the appellant for since April 2017.
- An Assessor Report (AR) dated 21 October 2017, completed by the appellant's GP.
- A Self Report (SR) dated 27 September 2017 signed by the appellant. Appended to the SR is a 2-page typed letter from 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 MR, the GP specifies the following diagnoses as related to the appellant's impairment:

- Left 2nd distal phalanx #

Severity of mental impairment

MR:

Under Health History, the GP writes: *[The appellant] has an un-united transverse fracture of his left index finger. As a result, he complains of chronic pain in his L (left) index finger. He reports having difficulty closing his hand and full flexion of his L (left) 2nd digit. Tender to touch with hypersensitivity. Reports unable to use left hand. Is RHD (right handed).*

Reports this pain has caused impact to his mental health and ability to cope with stressors. Impact on ability to do day-today activities.

The GP has ticked 'no' in response to whether there are difficulties with communication other than lack of fluency in English.

The GP indicates that the appellant has no significant deficits with cognitive and emotional functioning.

AR:

The GP describes the appellant's impairment as: *unable to use his L hand effectively. Depression assoc. with chronic pain and loss of L hand usage/function.*

The GP assesses the appellant's ability to communicate as good in the areas of speaking, reading and hearing and writing.

The GP has not completed the assessment for cognitive and emotional functioning and has written: *no mental impairment.*

SR:

The appellant reports that he is very depressed. He states that the pain medication has altered his life causing chronic depression, which impacts his life and makes him feel fatigued all the time. He is frustrated with his health conditions.

Severity of physical impairment

MR:

Under Health History, the GP writes: *[The appellant] has an un-united transverse fracture of his left index finger. As a result, he complains of chronic pain in his L (left) index finger. He reports having difficulty closing his hand and full flexion of his L (left) 2nd digit. Tender to touch with hypersensitivity. Reports unable to use left hand. Is RHD (right handed).*

Reports this pain has caused impact to his mental health and ability to cope with stressors. Impact on ability to do day-today activities.

For functional skills, the GP indicates that the appellant can walk 4+blocks unaided, climb 5+ steps unaided, and remain seated without limitation. The GP has not provided an assessment of the appellant's ability to lift.

In response to the question about aids or prostheses required, the GP states: *finger splint to help support his L (left) 2nd digit.*

AR:

The GP describes the appellant's impairment as: *unable to use his L hand effectively. Depression assoc. with chronic pain and loss of L hand usage/function.*

The GP assesses the appellant's mobility and physical ability as independent for walking indoors and outdoors and climbing stairs and standing. The GP indicates that the appellant requires periodic assistance with lifting and carrying and holding, with the comment: *Can use R (right) hand [illegible] left, needs help from others if need both hands.*

SR:

The appellant states that he suffers from chronic and severe medical conditions that are negatively impacting his life. He states that in April 2016 he had an accident at work that cut the index finger of his left hand and damaged the nerves. He reports that he has not been 'normal' since the accident. He states that he was on WCB until September 2017 and has a 'pending file' with them. The appellant states that his doctor told him he cannot work, and he is currently waiting for surgery. He reports that his left arm is disabled, and he is in chronic pain. He lists his medications and reports that they cause him to feel fatigued. He reports that he is unable to be fully active and he cannot lift due to chronic pain. He reports that pain medication prevents him from driving.

Ability to perform DLA

MR:

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

AR:

The GP indicates that the appellant is independent in all listed personal care activities; all basic housekeeping activities; all shopping activities; all meals activities; all pay rent and bills activities; all medications activities; and all transportation activities.

The GP has not assessed the Social Functioning section of the AR, writing: *no mental impairment.*

Help required

MR:

The GP indicates that the appellant requires a finger splint to help support his finger.

AR:

The GP indicates that the appellant receives assistance from friends. The GP reports that the appellant uses a splint and comments: *L 2nd digit splint to prevent flexion/pain of finger.*

The GP indicates that the appellant does not receive assistance from assistance animals.

2. Request for Reconsideration

The Request for Reconsideration dated 25 January 2018 is signed by the appellant, appended to which is a 1-page letter dated 26 January 2018. In this letter the appellant argues that he deserves disability status as he has lost full mobility in his left and due to a work accident. He states he is under financial hardship and cannot work. He reports that he has lost several jobs due to his disability and it has affected his life completely; he cannot do routine tasks of his daily life. He reports that he is in chronic pain and is dependent on medication and pain killers and they are depleting his health.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated 13 February 2018, the appellant provides as reasons for appeal: *my index finger on my left hand is broken and it cannot be fixed. Doctors say I might need it cut off. I cannot use my left hand permanently. This is affecting my life negatively. I am in chronic pain.*

Appeal Submissions

At the hearing, the appellant stated that he is in pain 24 hours every day. He states that he has recently started a different medication to help with sleep and anxiety. He reports that his medications cause him to be dizzy and rehabilitation is no longer an option for him. He has been told that his finger must be amputated. He reports severe pain when it's cold outside and does his best to keep it warm. He tries his best to manage his daily life with one hand. He reports that he is left-handed. He stated that he is really stressed and suffering from health and mental issues that prevent him from doing work or school. He is not working and lost his dog because he did not have money for veterinary treatment. He reports he is having a hard time dealing with things and is taking medications for pain and for mental issues. He states that he cannot find a job and what he is asking for is not unreasonable. He has been on income assistance for 4 months and was receiving WCB benefits until September 2017. He argues that he doesn't want to be on income assistance, he wants treatment, so he can go back to work and his normal life. He argues that he is trying to get jobs but has been told that he needs two hands. He argued that if the ministry can find him a job, he doesn't need PWD. The appellant stated that he is surprised by the doctor's report and has a hard time understanding them. He believes that the language barrier has caused a problem. He argues that his doctor is giving him high levels of medication for mental health issues but has stated that he doesn't have any problems with mental health. He is not very happy with service and treatment he is getting.

Appeal Documents

At the appeal the appellant submitted a letter from WorkSafeBC dated December 12, 2017, together with a 6-page review decision dealing with the appellant's request for a review of a compensation benefits decision. The decision summary indicated that the decision maker found that the appellant was eligible for wage loss and benefits beyond October 2016. As well, the decision maker found the Board's decisions that he was not eligible for a loss of earning disability award assessment or referral to a Vocational Rehabilitation Services were premature and had been returned to the board for further review.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal and at the hearing consist of argument and will be considered on that basis. The panel finds that the appellants' WorkSafeBC document is admissible in accordance with section 22 (4)(b) of the *Employment and Assistance Act* because it speaks to the appellant's workplace injury and is in support of information and records before the ministry at reconsideration. In reaching this conclusion on admissibility, the panel notes that the ministry stated that it had no objection to the admission of the document.

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 PWD designation 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;
- that the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her 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 *EAPWDA* applies to this appeal:

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 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 legislation makes it clear that 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.

Severity of physical impairment

In the reconsideration decision, the ministry determined that it was not satisfied that this criterion had been met. In making this determination, the ministry considered the functional skills assessment by the GP noting that the appellant is able to walk 4+ blocks unaided, climb 5+ steps unaided and can remain seated without limitation. The ministry noted that the GP had not assessed the appellant's ability to lift and states that he can use his right hand for lifting/carrying. The ministry also observed that the appellant is able to walk indoors and outdoors, climb, stair and stand independently. The ministry also noted that while the GP indicates that periodic assistance is required with lifting and carrying/holding, the frequency and duration of periodic assistance has not been described. As well, the ministry noted that the appellant has been assessed as independent with the majority of mobility and physical ability areas. The ministry's conclusion on this criterion was that a severe impairment of the appellant's physical functioning had not been established.

The panel finds that the ministry's determination was reasonable. The panel notes that the assessments of the appellant's functional capacity and mobility and physical ability assessments in the MR and AR provide a clear picture of the appellant's ability to function independently for the most part, with some assistance required for 2-handed lifting and carrying. The information provided by the appellant is also somewhat inconsistent with this as he reports being severely impacted from many medical conditions. Despite this, the appellant reports that he is able to manage his daily life and emphasized his inability to work. However, the panel notes that employability or vocational ability is not a criterion for PWD designation nor is it a DLA set out in the regulation. The panel finds that the information provided reflects an individual suffering from chronic pain and some limitations due to his finger injury but does not provide information establishing a severe impairment. The panel finds that the ministry's determination, that a severe physical impairment has not been established, is reasonably supported by the evidence.

Severity of mental impairment

In the reconsideration decision, the ministry found that the appellant does not have a severe mental impairment. The ministry noted that the GP's assessment in the MR did not indicate that the appellant has difficulties with communication or deficits to cognitive and emotional functioning. The ministry noted that the GP has indicated in the MR and AR that the appellant has mental health impacts associated with his pain but has also stated in the AR: "no mental impairment" in two sections of the report. The ministry noted that the GP did not indicate any impacts to cognitive and emotional function or restrictions to social function. The ministry concluded that a severe impairment of mental functioning has not been established.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonably supported by the evidence. The panel notes the absence of any diagnosis that would reflect a mental impairment as well as the GP's explicit statements of "no mental impairment". The panel also notes the absence of

communication difficulties, safety concerns and a need for support or supervision to maintain the appellant in the community. The panel notes that the GP's assessments relating to decision-making indicate that the appellant is independent in these areas. The panel notes that the appellant argued that he has been prescribed a high dose of medication for 'mental health' and has stress and anxiety problems. The panel also notes the appellant's arguments that he is not happy with the service from his doctor and is surprised by the reports. However, the panel finds that the ministry's conclusion that the information provided does not establish a severe mental impairment and that this criterion was not met is reasonably supported by the evidence

Direct and significant restrictions in the ability to perform DLA

The legislation specifies that the minister assess direct and significant restrictions in the ability to perform DLA in consideration of the opinion of a prescribed professional. This does not mean that other evidence should not be considered, but it is clear that a prescribed professional's evidence is fundamental. At issue in this assessment 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 ministry was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA. In reaching this conclusion, the ministry noted that the appellant has not been prescribed medication that impact his ability to perform DLA. The ministry considered the GP's assessment that the appellant is independent with personal care, basic housekeeping, shopping, meals, rent/bills, medication and transportation. The ministry also considered that the GP has not indicated any restrictions with social functioning. The ministry concluded that the assessments provided did not provide enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods.

The panel finds that the ministry's determination that the assessments provided do not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel finds that the GP's assessment of DLA in the AR indicates that the appellant is independent in all listed areas. The panel notes that while the appellant argued at reconsideration that he cannot do routine tasks of his daily life, he stated at the hearing that he is managing his DLA. The panel also notes that the legislation specifies that direct and significant restrictions to DLA must be in the opinion of a prescribed professional. Given the absence of information regarding direct and significant restrictions to DLA from a prescribed professional, the panel concludes that the ministry's determination that this criterion has not been met is reasonably supported by the evidence.

Help required

The legislation 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 determined that as it had not been established that appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required. While the information provided demonstrates that the appellant does use a splint and receives help from friends, the panel has concluded that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As such, the panel 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, determining that the appellant had not met all of the legislated criteria for PWD designation, was a reasonable application of the legislation in the circumstances of the appellant and reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.