

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 14, 2018 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 November 25, 2017, a medical report (MR) and an assessor report (AR) both dated December 12, 2017 and completed by a General Practitioner (GP) who has known the appellant since September 2016 and has seen him 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Letter dated July 6, 2017 from a cardiologist; and,
- 2) Request for Reconsideration dated April 3, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with Ischemic Heart Disease (IHD) with Angina- pain at rest, since June 2009, his first Myocardial Infarction (MI) with stenting in July 2009 and his second MI with stenting in July 2015, and he has ongoing chest pain at rest, or Angina. There was no diagnosis of a condition within the mental disorders diagnostic category of the MR. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote in the AR "N/A," or not applicable.

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, he has "chest pains at rest- started pre-heart attack in 2009, causes shortness of breath (SOB) therefore unable to work. Heart attack times 2, caused chest pain at rest, unable to work."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk more than 4 blocks unaided on a flat surface (the GP noted that for more than 4 blocks he has SOB), climb 5 or more steps unaided (the GP noted that 6 steps then he has SOB), lift 2 to 7 kg. (5 to 15 lbs) (note: "pain on chest if lifts more than 10 kg."), and he has no limitation with remaining seated.
- In the additional comments to the functional skills, the GP wrote that the appellant had been working at a physical job where he had to do a lot of heavy lifting and walking and had very long shifts (24 hours at times) and he is "unable to do above due to chest pain."
- In the AR, the appellant is assessed as independent with walking indoors and walking outdoors and with standing. The appellant takes significantly longer than typical with climbing stairs (note: "SOB after 6 steps, has to walk slower") and with lifting (note: "chest pain on lifting more than 7 kg."), and with carrying and holding (note: "chest pain on carrying weight more than 7 kg."). The GP commented that the appellant has "Angina at rest so activity increases chest pain."
- In the section of the AR relating to assistance provided, the GP did not identify an assistive device as routinely used by the appellant, but indicated the appellant "would benefit from scooter" since he has SOB on walking, but he has no scooter as yet.

In the letter dated July 6, 2017, the cardiologist indicated:

- The appellant stated that he has very intermittent chest discomfort that lasts for seconds at a time. Otherwise, the appellant "...is able to walk his dog for up to 2 miles and he can even walk up hills."
- His plan is to reassess the appellant in one year.

In his self-report, the appellant wrote:

- He has a heart problem with heart attacks in 2009 and 2015.
- His disability keeps him from working.
- Lifting and walking long distances causes SOB and continuous pain.
- He gets out of breath walking up stairs and standing more than 3 hours.

In his Request for Reconsideration, the appellant wrote:

- He has ongoing health problems.
- He has trouble breathing when standing for long periods of time and when walking for more than 2 miles.
- He cannot lift more than 6 lbs. and he cannot stand for longer than 2 hours.
- He can only walk a few stairs before he runs out of breath.

Mental Impairment

In the MR and the AR, the GP reported:

- There are no difficulties with communication and no significant deficits with cognitive and emotional function.
- The appellant has a good ability to communicate in all areas.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP indicated that there are no impacts to any of the listed areas of functioning and wrote that the appellant "...has normal cognition, not a mental impairment. Has functional disability, physical illness, chest pain from IHD."
- The appellant is independent in all aspects of his social functioning and has good functioning in both his immediate and his extended social networks.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the GP referred to a motorized scooter and reported that there are no safety issues.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication that interferes with the appellant's ability to perform DLA and wrote "falls could cause bleeding."
- The appellant is independent with all tasks of all of the listed DLA, specifically: moving about indoors and outdoors, personal care, the basic housekeeping (including laundry), shopping (including carrying purchases home), meals, pay rent and bills, medications, and transportation.

- For additional comments, the GP wrote that the appellant “requires help with housework- manual and carrying bags- manual. Brings on chest pain.”

In his self-report, the appellant wrote that his disability keeps him from working.

In his Request for Reconsideration, the appellant wrote:

- He has worked full-time for all his life and, due to several heart attacks over the past few years, he has not been able to maintain work.
- He still has heart specialist appointments pending and the doctor advises no return to work until all his tests are complete.

Need for Help

- In the AR, the GP reported that the appellant’s family help with his DLA, specifically his brother and sister-in-law.
- In the section of the AR relating to assistance provided, the GP did not identify any of the listed assistive devices as being required by the appellant but indicated that equipment is required that is not currently being used and wrote: “SOB on walking- scooter would help ease condition of Angina- no scooter as yet. Would benefit from scooter.”

Additional information

In his Notice of Appeal dated March 21, 2018, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he deserves to find out why the ministry thinks that a heart attack is not a health risk. He has been out of work for almost 5 years because his doctor will not let him go back to work.

At the hearing, the appellant stated:

- He has been to the GP about 2 to 10 times but his original family doctor retired.
- He has a number of stents and a couple of days ago he was experiencing chest pain even though he takes the medications. He got 3 stents after his first heart attack in 2009 and 6 stents during his second heart attack in 2015.
- The first heart attack started with stomach pains and he ended up spending 5 days in hospital. The second one, he had gotten off work and was at home when it “hit” him and he could not breathe. He was fortunate to get to the hospital in time.
- If he has to carry heavy bags, he gets pain in both arms.
- He cannot walk many stairs.
- He has not been working for many years. His doctor will not let him go back to work.
- With his previous work, he often lifted heavy items and had worked through the night, up to 24 hours at a time. After he had his heart attack and could not return to work, his employer did not even call to see how he was doing.
- He gets pains now and again no matter what he is doing, usually about once a day. The pain is on the left side of his chest. Sometimes he will get pain when using the washroom. Sometimes he gets pain when he is sleeping. His chest will start to “lock up” for 2 to 3 minutes.
- He can walk about 6 to 7 blocks but he starts to get out of breath and his arms hurt. He could walk up to 2 miles on a flat surface, but not up hills and not up stairs.

- He has another appointment with his doctor at the end of next month.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry clarified at the hearing that ability to work is not a consideration for the PWD designation, as it is for the Person with Persistent Multiple Barriers (PPMB) to employment status.

Admissibility of Additional Information

The panel considered that there was no additional information for which a determination of admissibility was required under 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 the 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 impairment. The ministry acknowledged that the GP diagnosed the appellant with IHD, his first MI with stenting in July 2009 and his second MI with stenting in July 2015, and the appellant has ongoing chest pain at rest, or Angina. The GP wrote that the appellant "chest pains at rest- started pre-heart attack in 2009, causes SOB therefore unable to work. Heart attack times 2, caused chest pain at rest, unable to work." In his self-report, the appellant wrote that his heart problem keeps him from working. At the hearing, the appellant stressed that his doctor will not allow him to work and he has not been able to work since his last heart attack in 2015. The ministry stated at the hearing that ability to work is not a consideration for the PWD designation.

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. The panel finds that the ministry reasonably concluded that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The panel finds that the ministry reasonably required sufficient evidence to determine the nature of the impairment and the extent of its impact on daily functioning in order to assess the severity of the impairment.

The ministry reasonably considered the impacts of the appellant's diagnosed medical condition on his daily functioning, beginning with the assessments provided in the MR and the AR. The ministry considered that the GP assessed the appellant's functional skills in the MR as being able to walk more than 4 blocks unaided on a flat surface (the GP noted that for more than 4 blocks he has SOB), climb 5 or more steps unaided (the GP noted that 6 steps then he has SOB), lift 5 to 15 lbs. (note: "pain on chest if lifts more than 10 kg."), and he has no limitation with remaining seated. The ministry considered that the GP also wrote that the appellant had been working at a physical job where he had to do a lot of heavy lifting and walking and had very long shifts (24 hours at times) and he is "unable to do above due to chest pain." In his self-report, the appellant wrote that lifting and walking long distances causes SOB and continuous pain. He also wrote that he gets out of breath walking up stairs and standing more than 3 hours.

The ministry considered that the appellant's cardiologist indicated in the letter dated July 6, 2017 that the appellant stated he has very intermittent chest discomfort that lasts for seconds at a time and, otherwise, he "...is able to walk his dog for up to 2 miles and he can even walk up hills." In his Request for Reconsideration, the appellant wrote that he has ongoing health problems and he has trouble breathing when standing for long periods of time and when walking for more than 2 miles. The appellant wrote that he cannot lift more than 6 lbs., he cannot stand for longer than 2 hours, and he can only climb a few stairs before he runs out of breath. At the hearing, the appellant clarified that he can walk about 6 to 7 blocks but he starts to get out of breath and his arms hurt. The appellant stated that he could walk up to 2 miles on a flat surface, but not up hills and not up stairs.

The ministry reasonably considered that the GP assessed the appellant in the AR as independent with walking indoors and walking outdoors and with standing. The ministry wrote that although the GP assessed the appellant as taking significantly longer than typical with climbing stairs, with lifting, and with carrying and holding, the comments by the GP: "SOB after 6 steps, has to walk slower," "chest pain on lifting more than 7 kg.," and "chest pain on carrying weight more than 7 kg." do not explain how much longer than typical these activities take the appellant and do not demonstrate significant restrictions. The GP also commented that the appellant has "Angina at rest so activity increases chest pain," but the limitations identified remain within the moderate range of functional skills. The ministry also considered that the GP reported that the appellant does not require an aid for his impairment and he does not routinely use an assistive device. The GP indicated the appellant "would benefit from scooter" since he has SOB on walking, but the appellant does not currently have a scooter.

For the ministry to be "satisfied" that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

Given the GP's assessment of independent functional skills within the high to moderate range, and a confirmation by the specialist cardiologist of the appellant's independent mobility, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under 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 panel notes that there was no diagnosis by the GP of a condition within the mental disorders diagnostic category of the MR, and the ministry considered that the GP wrote that the appellant "has normal cognition" and there is no mental impairment. The ministry reasonably considered that the GP reported in the MR that the appellant has no significant deficits to his cognitive and emotional functioning and no difficulties with his communication. The appellant is independent in all aspects of his social functioning and has good functioning in both his immediate and his extended social networks.

Given the absence of evidence of significant impacts to the appellant's cognitive, emotional, or social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under 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." The panel notes that both the MR and the AR forms direct the person completing those forms to explain in more detail the nature of any continuous restrictions and/or the nature, frequency and duration of any periodic restrictions to an applicant's ability to perform DLA. 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 MR, the GP reported that the appellant has been prescribed medication that interferes with his ability to perform DLA and the GP wrote "falls could cause bleeding." In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the GP wrote that this was not applicable to the appellant. The GP also indicated that the appellant is independent with the move about indoors and outdoors DLA, with no need for assistance by another person or by an assistive device.

In the reconsideration decision, the ministry wrote that the GP reported that the appellant is independently able to manage all DLA, specifically: the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the paying rent and bills DLA, the medications DLA, and the transportation DLA. The ministry wrote that while the GP provided comments that the appellant "requires help with housework- manual and carrying bags- manual. Brings on chest pain," there was no further information to explain the type, the frequency, or the degree of the assistance that the appellant requires to manage these DLA. In his self-report and his Request for Reconsideration, the appellant focused on his inability to work since his heart attacks. The appellant wrote he still has heart specialist appointments pending and the doctor advises no return to work until all his tests are complete.

Given the GP's assessment of the appellant's overall independence in performing the tasks of the listed DLA, and the appellant's physical functional skills in the high to moderate range, the panel finds that the ministry reasonably determined 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.

While the GP indicated that help for DLA is provided by the appellant's family and equipment is required by the appellant that is not currently being used, specifically a motorized scooter, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry 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.