

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 15 August 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 that he has a severe mental or physical impairment, that in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years.

The ministry further determined that the appellant had not demonstrated that his 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 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 25 May 2018, completed by a general practitioner (GP) who has seen the appellant 2-10 times in the past 12 months and known the appellant since November 2013.
- An Assessor Report (AR) dated 25 May 2018, completed by the same GP.
- A Self Report (SR) dated 31 May 2018, signed by the appellant, indicating that he needs help reading and writing and has chosen not to complete the SR.

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

#### Ability to perform DLA

MR:

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

The GP does not indicate whether the appellant's impairment restricts his ability to perform DLA. The GP goes on to indicate that it is unknown whether the appellant is restricted in relation to: personal care, meal preparation, management of medications, basic housework and daily shopping. The GP indicates that the appellant is not restricted in relation to: mobility inside of the home, use of transportation and management of finances. The GP indicates that the appellant is restricted continuously with mobility outside of the home. Social functioning has not been assessed.

In explaining the degree of restriction, the GP comments: *Difficulty walking short distances due to painful limbs and back spasms/pain.*

In relation to assistance needed with DLA, the GP comments: *Requires assistance with literacy skills, travelling to shop and mobilising.*

AR:

The GP indicates that the appellant is independent in the personal care activities of grooming, bathing, feeding himself, and regulating diet. The GP indicates that the appellant takes significantly longer with bathing and toileting activities of personal care.

The GP indicates that the appellant is independent with all basic housekeeping activities.

The GP indicates that the appellant is independent with the shopping activities of reading prices and labels, making appropriate choices and paying for purchases. The GP indicates that the appellant takes significantly longer with going to and from stores and carrying purchases home.

The GP indicates that the appellant is independent with all meals activities, all pay rent and bills activities and all medications activities.

The GP indicates that the appellant takes significantly longer getting in and out of a vehicle and that using public transit and using transit schedules and arranging transportation are N/A [not applicable].

The GP comments: *no safety issues and no exposure to urban transportation due to rural locality of current residence.*

## Section 2(1)(b) of the EAPWDR

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 is unknown whether the appellant is restricted in his ability to manage personal self-care, meal preparation, shopping, basic housework and medications. The GP indicates that the appellant is not restricted in his ability to manage finances and transportation.

AR:

The GP indicates that the appellant is independent with the personal care activities of regulating his diet; the shopping activities of reading labels, making appropriate choices, and paying for purchases; the meals activities of safe storage of food, cooking, food preparation and meal planning; the pay rent and bills activities of budgeting, banking and bill payment; the medications activities of filling/refilling prescriptions, taking as directed and safe handling and storage. The GP reports that the appellant is independent with making appropriate social decisions as part of social functioning.

### *Relate to, communicate or interact with others effectively*

MR:

The GP indicates that the appellant has difficulties with communication, the cause of which is motor and sensory. The GP comments: *Mild hearing impaired. Slow speech.*

Social functioning is not assessed in the MR.

AR:

The GP assesses the appellant's ability to communicate as satisfactory for speaking and poor for reading, writing, and hearing. The GP comments: *Sensory loss L>R [left greater than right] ear. Slow speech.*

In assessing social functioning activities, the GP indicates that the appellant is independent with all activities: appropriate social decisions; developing and maintaining relationships; interacting appropriately with others; dealing appropriately with unexpected demands; and securing assistance from others. The GP indicates that the appellant has good functioning in his immediate and extended social networks.

In response to the prompt to indicate help required, the GP comments: *Physiotherapy. Assistance with travel/walking.*

### Help required

MR:

The GP indicates that the appellant does require aids or prostheses, and comments: *He may require a walker due to progressive nature of lumbar spine disease and increasing difficulty walking.*

AR:

The GP indicates that the appellant receives assistance from friends and health authority professionals.

The GP indicates that the equipment required, but not currently being used, is a walker.

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

## **2. Additional Documents**

- Diagnostic Imaging Report dated 25 August 2016
- Visiting Specialist Clinic Consult (Rheumatology) dated 9 April 2014
- Catherization and Angioplasty report dated 6 June 2013

## **3. Request for Reconsideration**

The appellant's Request for Reconsideration dated 8 August 2018, provided the following reasons for the request: *The issues mentioned in my original application spoke to why my medical problems have limited me from working but they have limited me from some basic day to day functions and affected my living. I have stabbing pains in my feet, at times I cannot walk because of it. I get cramping and numbness in my hands, because of this I have a hard time holding things or opening bottles/containers. My back pain is severe and prevents me from walking, and I am unable to stay in a position such a sitting or laying down for more than a few minutes at a time. This pain is also in my hips and runs down to my legs which is another reason why I cannot walk or sit, or lay down for long periods of*

*time. I also have swelling in all of my joints I also have problems with my heart which are not fully diagnosed and I am working now to figure out what the issues are. The issues brought up by my doctors are worsening weekly and the opinion of my doctors is that at this point the chances of me recovering from these issues is minimal and it is more likely I will have to live with these medical issues.*

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

### **Notice of Appeal**

In the Notice of Appeal dated 16 August 2018, the following reasons for appeal are provided: *My physical disabilities do effect my daily living activities.*

### **Appeal Submissions**

The appellant argued that the reconsideration decision doesn't take into consideration sharp pains in his feet and unbearable pains in his hands and feet at times. He argued that he cannot pick things up and cannot sit for very long. He explained that his medications don't work very well, and he cannot take much due to his heart. He argued that his pain is worse than the ministry thinks and there are days when he cannot leave his apartment. The appellant explained that in order to complete his shopping, at a store 150 yards from his home, he has to sit and rest halfway, he rests on the cart while in the store and rests halfway home. He states that this is because his back and feet hurt so badly. He explained that when getting up from a chair, he has to stand at least 30 seconds before he can move, and he props himself up with pillows, so it will be easier to get up. He described using handles in his shower and supports by the toilet and sink to help with moving around for bathing and toileting activities. He explained that he would have a hard time getting around if he didn't have them. He described difficulty getting into/out of vehicles, stating that there are certain vehicles he cannot get into because they are too low to the ground. The appellant argued that his joints and his pain have worsened since the PWD application was completed by his doctor. He also explained that while there are certain things he can do, like bathing and taking care of his house, there are also other things he cannot do, like lift heaving items.

The ministry relied on the reconsideration decision.

### **Admissibility**

The panel finds that the information provided in the appellant's Notice of Appeal consists of argument, which does not require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*. The panel finds that the information provided by the appellant at the hearing is in support of information and records before the ministry at reconsideration and is admissible.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reconsideration decision that determined that the appellant did not meet two 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'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 significant help or supervision of another person 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.

### **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, in this case the GP. 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 panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be due to a severe mental or physical impairment.

The ministry determined that this criterion was not met. In reaching this conclusion, the ministry noted that the GP's MR assessment indicates continuous restrictions with mobility outside of the home and no restrictions with mobility inside of the home, transportation or finances. The GP noted that in the MR, the GP indicates that it is unknown whether the appellant is restricted in the remaining DLA listed in the application. The ministry also noted that the GP reports that the appellant has difficulty walking short distances and requires assistance with literacy skills, travelling to shops and mobilizing. The ministry also considered the GP's assessment in the AR that while he appellant takes longer with some activities, the additional time required was not reported. The ministry also noted that while the GP reports no safety issues in the MR, the GP also indicates in the AR that the appellant is more accident prone. The ministry argued that while the appellant's condition is progressive, he does not require assistance with DLA at this time. 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.

The panel finds the ministry's determination on this criterion to be reasonable. The panel notes that the legislation specifies that direct and significant restrictions to DLA must be in the opinion of a prescribed professional. The panel finds that the assessments provided by the GP establish that the appellant has continuous restrictions to mobility outside of the home. The panel finds that the GP's assessments and the appellant's testimony with respect to the remaining DLA set out in the legislation indicate that the appellant is predominantly independent, with some activities taking significantly longer. The panel accepts the appellant's testimony that while his condition is worsening, he is able to complete his DLA but takes rest breaks with some activities. The panel finds that, in relation to the DLA that take significantly longer than typical, the information provided is insufficient to describe how much longer which leads the panel to conclude that the extent to which the appellant requires additional time is somewhat unclear. The panel concludes the evidence is insufficient to show that the appellant's ability to perform DLA is significantly restricted either continuously or periodically for extended periods is reasonable. As such, the panel concludes that the ministry's determination 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 DLA.

In the reconsideration decision, the ministry determined that as it had not been established that the appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required. The panel notes that the appellant has indicated that he uses assistive devices for personal care, such as handles in the shower and supports by toilets and sinks. The panel also notes that the information provided by the GP indicates that the appellant does receive some assistance from friends and health authority professionals and would benefit from a walker. However, 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 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, 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 was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister  
for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:***Employment and Assistance Act*Section 24(1)(a)  or Section 24(1)(b) 

and

Section 24(2)(a)  or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/09/07

PRINT NAME

Gurjit Chaplin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/07

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/09/07