

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") reconsideration decision dated December 11, 2019, in which the Ministry found that the Appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the Employment and Assistance for Persons with Disabilities Act ("EAPWDA"). The Ministry found that the Appellant meets the age and duration requirements, but was not satisfied that:

- the Appellant has a severe mental or physical impairment;
- the Appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the Appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The Ministry also found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

22(3)(b), s.22(4) of the Employment and Assistance Act ("EAA")
s. 2 of the Employment and Assistance for Persons with Disabilities Act ("EAPDA")
s. 2. 1 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

1. Information from the Ministry's record of decision indicating that the PWD application was received by the Ministry on August 12, 2019 and denied on August 29, 2019. On December 20, 2019, the Appellant requested reconsideration and submitted a signed Request for Reconsideration ("RFR"). On December 11, 2019, the ministry reviewed the RFR.
2. The Appellant's RFR states:
 - That their COPD condition, ischemic heart disease, and peripheral vascular disease requires regular testing, monitoring and adjusting of medication.
 - They do not have family and are assisted financially by their landlords.
 - They do not drive and depend on their landlords for transportation.
 - They try to take a walk daily and do some house chores to assist with room and board but are easily winded and need regular breaks.
 - They have asked their doctor on multiple occasions about returning to work and have been advised that landscaping and maintenance work is too strenuous for the state of their heart.
3. The PWD application comprised of a medical report ("MR") and an assessor report ("AR") both completed by the Appellant's physician and a self report ("SR") completed by the Appellant. Each report is considered in the context of Diagnosis, Functionality, DLA and Help will be described below.
4. A letter from the Appellant's landlord dated November 24, 2019 which states:
 - We did not receive the letter dated August 29, 2019 from the Ministry until the Appellant made an appointment last week to find out the status of their request for assistance.
 - The Appellant has made several requests to their physician to go back to work on "light duty" and the physician has indicated that the Appellant's health is not good enough.
 - The Appellant has been for multiple testing for their heart condition and has been on medication for their condition for over one year.
 - The landlord understands that COPD and the Appellant's other conditions are degenerative and will not improve.

Diagnoses

MR

- The Physician has seen the Appellant since May 2018 and has seen the Appellant 2-10 times in the past 12 months
- the Appellant is has diagnoses including ischemic heart disease, peripheral vascular disease and COPD.

Functional Skills

SR

- Shortness of breath and difficulty walking.
- Unable to return to work and always tired after exercise.
- Had to move to a rural area.
- Walks dogs and does as much exercise as able.
- Gets a sore calf when they walk half a block. It burns and gets hard.
- Short of breath when walking long distances

MR

- Severe shortness of breath when walking too far
- Severe calf pain
- Difficult to mobilize as necessary
- Can walk unaided 1-2 blocks. Limitation in walking due to pain in legs and shortness of breath.

- Can climb 5 or more stairs
- Can lift 15-35 pounds
- No limitation on remaining in a seated position
- No cognitive or emotional issues
- Severe arterial diseases in both legs
- No medications or aids for the impairment

AR

- The Appellant lives with friends
- The Appellant's DLA are not impacted by physical impairment.
- The Appellant is "good" in all areas of communication.
- There are no impacts on cognitive or emotional functioning
- The Appellant was independent in the areas for mobility and physical activity of but took significantly longer for walking outdoors, climbing stairs, and standing due to pain and shortness of breath and pain in the right calf.

DLA

The AR states the Appellant was independent in all DLA except that they took significantly longer going to and from the store due to calf pain and shortness of breath.

Help

The AR states that friends help him get to places that take longer to walk to.

The Hearing

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The Ministry relied on their reconsideration decision for their submission in the appeal.

The Appellant's notice of appeal states:

- They have made several requests to return to work on light duty and their physician had advised that their health is not good enough due to the physical labour involved.
- Due to the limited heart function and COPD they are on daily medications and continued testing with their physician.

The panel determined the additional written evidence set out in the Appellant's notice of appeal was admissible under s. 22(4) of the EAA. The panel found it was reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision that found the Appellant ineligible for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the Appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the Appellant has a severe mental or physical impairment;
- the Appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform DLA either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the Appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The legislation provides:

EAPWDA

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).

EAPWDR

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.

The panel finds

Severe mental or physical impairment

To be eligible for PWD designation, the legislation requires several criteria to be met including the Ministry being satisfied that the applicant has a severe mental or physical impairment. Severe is not defined in the legislation and the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

While the Appellant and the Physician provide evidence about the Appellant's ability to work, this ability is not relevant in the PWD analysis.

The Appellant did not argue that they had a severe mental impairment. The Appellant reports that they suffer from COPD condition, ischemic heart disease, and peripheral vascular disease all of which require regular testing, monitoring and adjusting of medication. They have shortness of breath and difficulty walking, are unable to return

to work and always tired after exercise, had to move to a rural area, they do as much exercise as possible, get a sore calf when they walk half a block, and have shortness of breath when walking long distances.

The Ministry submits that the information provided in the PWD application does not demonstrate a severe physical impairment because the Appellant doesn't require assistive devices such as a cane or walker to enable the Appellant to stop and rest to achieve further distances. The Ministry found that the Physician did not provide test results to confirm the severity of the Appellant's COPD and shortness of breath. The Ministry submits that the Appellant could complete DLA even with the difficulties in walking and that the Appellant is capable of all other functional skills and independent in DLA.

The panel finds that the Ministry's decision on physical impairment is reasonably supported by the evidence. Considering the functional skills assessed by the Physician, the Appellant is described as only having a moderate degree of restriction with walking which is related to shortness of breath and calf pain. The Physician found the Appellant to be independent in the areas for mobility and physical activity of but took significantly longer for walking outdoors, climbing stairs, and standing due to pain and shortness of breath and pain in the right calf. The Appellant indicates that he walks dogs and tries to get as much exercise as possible. The Appellant's evidence supports the fact that walking, although more difficult for the Appellant with the relatively new diagnoses, is still something that he is able to do to complete DLA and to maintain exercise. While the Physician indicates that the Appellant relies on the landlord for rides for longer distances it is unclear if this is a daily reliance and for what purposes so the panel is unable to determine this impact on the severity of the appellant's impairment.

DLA

Subsection 2(2)(b)(i) of the EAPWDA requires the Ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. The term "directly" means there must be a causal link between the severe impairment and the restrictions to DLA. The direct restriction must also be significant. Finally, there is a component related to time or duration: the direct and significant restriction may be either continuous or periodic. If periodic, the restriction must be for extended periods. An analysis of periodic restrictions must also include how frequently the activity is restricted. All other things being equal, a restriction that arises twice a month is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate to require evidence on the duration and frequency of the restriction in order to be satisfied that this criterion is met. DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, a practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods, and to provide additional narrative. DLA, as defined in the legislation, does not include the ability to work.

The Appellant argues that he is unable to work and unable to walk long distances without becoming short of breath. The Appellant states that they rely on their landlord for transportation. They need to take regular breaks when walking and are unable to return to work.

The Ministry argues that the information from the Physician is that the Appellant is independent in almost all areas of DLA. The Ministry states that although the physician found the Appellant to take significantly longer in a few areas the Physician does not describe how much longer and despite the Appellant's limits to walking the Physician still found the Appellant to be independent in all other areas of DLA.

The panel has considered the evidence from the Physician and finds that the Ministry's determination that DLA are not significantly restricted is reasonably supported by the evidence. While the Appellant has shortness of breath and takes significantly going to and from the store, the Appellant can complete all of their DLA. The Appellant indicates that they rely on rides from their landlord to go to and from the store but the Physician record also indicates that the Appellant is also able to go to and from the store but that it takes them significantly longer. There is no information about how much longer the Appellant's store trips take, the distance to the store, or the frequency of going to the store so the panel is unable to determine whether this is a significant restriction.

Help

Help to perform daily living activities Subsection 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. 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 DLA.

The Appellant indicates that they rely on friends to drive them to the store. The panel finds that although the Appellant may rely on friends to drive them to the store it is unclear if the Appellant requires a drive to do their shopping trips. It appears that the Appellant can walk some distance although it takes longer. It is unclear if the Appellant requires a drive to do shopping. Even if the Appellant requires a drive to do shopping, it appears the Appellant can get these rides and that this is the only DLA that "takes significantly longer" for the Appellant to complete. Given that the Appellant has not been found to have significant restrictions to perform DLA the panel finds that it was reasonable for the Ministry to determine that help is not required for this Appellant.

Conclusion

The panel considered the information in its entirety and finds that the Ministry's reconsideration decision that found the Appellant ineligible for PWD designation is reasonably supported by the evidence.

The legislation requires all of the criteria to be met. The Ministry found that only two of the five criteria (age and duration of impairment) were met.

Based on the functional skills and DLA assessments by the Appellant's Physician and the record as a whole, the panel finds that the Ministry reasonably concluded that the information provided does not demonstrate a severe impairment of mental or physical functioning, significant restrictions to DLA, and significant help required for DLA. The panel confirms the Ministry's decision. The Appellant is not successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2020/Mar/02

PRINT NAME Linda Pierre	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020/Mar/02
PRINT NAME John Pickford	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020/Mar/03