

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated June 9, 2010 which held that the appellant did not meet 3 of the 5 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 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or that 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. The ministry also found that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help 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 reconsideration was comprised of a PWD application (Self-Report (SR), Physician Report (PR), and Assessor Report (AR)) and the Request for Reconsideration which included the results of an audiogram.

In the SR, the appellant writes that due to being pushed down granite stairs he suffered injuries including a concussion, bleeding ears, permanent deafness in his left ear, a broken right shoulder, and injured knees. The appellant also reports dizziness when tilting his head back and ongoing soreness of his knee joints.

In the PR, the appellant's general practitioner since 1999 diagnoses the appellant with significant head injury (x2 fractured skull 2007), right shoulder injury (repair dislocation), significant alcohol abuse (episodic), right hand surgery (zygoma repair), deafness in the left ear and chronic vertigo with head movement. The physician writes that the appellant's main problems arise from binge drinking resulting in a series of assaults causing head injuries which have long term consequences on executive functioning. Significant right hand and shoulder pain is chronic. Regarding Functional Skills, the appellant is able to walk 4+ blocks and climb 5+ steps unaided, lift 15 to 35 lbs, and has no limitations remaining seated or difficulties with communication. Significant deficits with cognitive and emotional function are reported for 4 of 11 listed aspects (executive, language (auditory), memory, and impulse control). The appellant has been hospitalized twice for depression and has attended the emergency department numerous times due to assaults. The physician reports that the appellant is unable to perform the strenuous work he used to and is at risk, due to his deafness, in industrial or building sites.

In the AR, also completed by the appellant's physician, impaired impulse control and several severe head injuries, which resulted in deafness [in the left ear] and vertigo are listed as the impairments impacting the appellant's ability to manage DLA. The appellant's Ability to Communicate is reported as satisfactory for speaking, reading, and writing and poor for hearing (total deafness in left ear). Regarding Mobility and Physical Ability, the appellant is reported as independent with walking indoors and outdoors, climbing stairs, and standing and as both independent and requiring periodic assistance with lifting (right arm and shoulder weakness and pain); periodic assistance is also indicated for carrying/holding. Regarding Cognitive and Emotional Functioning, the assessor notes a "significant head injury history" and reports a major impact on daily functioning for 1 aspect (impulse control) and a moderate impact for 2 aspects (emotion and executive); either no or a minimal impact is reported for 10 aspects with the assessor writing "unknown" for the remaining 1 aspect (learning disabilities). Regarding DLA, the appellant independently manages all aspects of personal care, basic housekeeping, meals, paying rent and bills, medications, transportation, and social functioning as well as 4 of 5 aspects of shopping; periodic assistance is indicated for 1 aspect of shopping, carrying purchases home, with narrative that the appellant "can use his right arm to carry small stuff". Marginal functioning is reported with both immediate and extended social networks. Regarding assistance, the assessor writes "most help he requires is of an emergency medical nature"; no other assistance is indicated.

In Section 2 of the Request for Reconsideration, the appellant writes that his disabilities, which include left ear deafness, right shoulder damage and knee cartilage damage, are permanent. The appellant writes that he has very limited use of his right shoulder and that his injury restricts walking distances, the time he can remain seated, and daily living. He writes that he is limited to performing housework once a week at a slow pace due to constant pain for which he requires prescription medication. Attached is an audiogram dated January 29, 2010 with the comment "mild hearing loss in the right hear; profound mixed hearing loss in the left ear".

On appeal, the appellant resubmitted information already before the ministry at reconsideration. The ministry's submission on appeal was the reconsideration summary.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that the appellant does not have a severe physical or mental impairment and that his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that the appellant does not require help to perform DLA. The ministry determined that the age requirement had been met and that the appellant has an impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication. Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

The appellant's position is that he is eligible for designation as a PWD because his impairment is permanent and restricts his ability to walk, sit and perform physical activity including housework on a daily basis.

The ministry's position is that the evidence does not establish the existence of a severe physical or mental impairment which directly and significantly restricts the appellant's ability to perform DLA or necessitates help.

Regarding the existence of a severe physical impairment, the evidence of the appellant is that he is restricted in his ability to walk distances and remain seated, though he does not specify how far he can walk or how long he can remain seated, and that he has difficulty with physical activity including housekeeping. The appellant has also given evidence of a knee impairment which has neither been diagnosed nor confirmed as likely to last for at least 2 years by a medical practitioner. The appellant's physician, in both the PR and AR, reports no limitations respecting the appellant's physical functioning in terms of walking, climbing stairs, or remaining seated and a lifting/carrying limit with the right arm of 15 to 35 lbs which necessitates periodic assistance. The evidence of both the appellant and his physician is that the appellant is deaf in his left ear and experiences chronic vertigo and the audiogram indicates mild hearing loss in the right ear. The panel finds that the evidence of the appellant is inconclusive as to what distance he can walk and for how long he can remain seated and appears to reflect, at least to some degree, knee impairments not diagnosed by a medical practitioner. The panel finds that the evidence of the appellant's long term physician indicates independent function with all mobility related aspects of physical function except lifting which is limited to 15 to 35 lbs and that the appellant is deaf in one ear. Additionally, aside from being unsafe in certain work environments, no evidence has been provided regarding impact on daily functioning resulting from the appellant's hearing loss. Based on the above evidence, the panel finds that the ministry reasonably determined that the evidence does not establish a severe physical impairment under section 2(2) of the EAPWDA.

Regarding the existence of a severe mental impairment, the evidence is that the appellant has a significant head injury history and significant deficits with cognitive and emotional function in 4 of 11 specified aspects. However, only 1 aspect of cognitive and emotional functioning, impulse control, has a major impact on daily functioning and, additionally, the evidence does not establish that the appellant's mental impairment has any impact on his ability to manage DLA, including those specifically related to mental impairments such as social functioning and making decisions about personal care or finances. While the physician identifies a problem with alcohol abuse which is described as periodic and writes that binge drinking is the appellant's main problem, there is insufficient evidence to determine the frequency or duration of these episodes. The physician also indicates that the appellant has been hospitalized twice for depression but has not included depression in his current diagnosis. The appellant has not provided evidence respecting the existence of a mental impairment. Therefore, as only 1 aspect of cognitive and emotional function has a major impact on daily functioning, there is no evidence of any impact on the appellant's ability to perform DLA due to a mental impairment, and as neither the frequency nor duration of incidents of binge drinking can be established, the panel finds that the ministry reasonably determined that the evidence does not establish a severe mental impairment under section 2(2) of the EAPWDA.

Regarding the degree of restriction with DLA, the legislation requires that a direct and significant restriction in the ability to perform DLA be in the opinion of a prescribed professional. The evidence of the prescribed professional, the appellant's physician, is that the appellant manages all aspects of all DLA independently with the exception of 1 aspect of the DLA shopping, carrying purchases home, for which the appellant requires periodic assistance. In light of the prescribed professional's evidence that the appellant manages 32 of 33 aspects of DLA independently, the panel finds that the ministry reasonably determined that the appellant is not, in the opinion of a prescribed professional, directly and significantly restricted in his ability to perform DLA, either continuously or periodically for extended periods under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the panel finds that the ministry reasonably determined that, as it has not been established that DLA are significantly restricted, it cannot be determined that help with DLA which are directly and significantly restricted was established under section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.