

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated August 17, 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. The Ministry was not satisfied that the appellant has a severe physical or mental impairment or that the Appellant's impairment significantly restricts his ability to perform daily living activities (DLA). The Ministry also found that the Appellant did not require the significant help or supervision of another person to perform DLA restricted by his impairment.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

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

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:
(a) the information and records that were before the minister when the decision was being made, and
(b) oral or written testimony in support of the information and records referred to in paragraph (a).

The Ministry was not in attendance at the hearing. After confirming that the Ministry had been notified, the hearing proceeded under s. 86(b) of the Employment And Assistance Regulation.

The evidence before the Ministry at reconsideration was a PWD application, dated January 21, 2010, including a Physician Report (PR) and an Assessor Report (AR), both completed by the appellant's physician and dated January 21, 2010. The Ministry also had received a letter from the Appellant, which was not dated.

In the PR, the Appellant is diagnosed with Crohn's disease, abdominal pain and diarrhea. The physician reports multiple relapsing Crohn's episodes, noted that the Appellant was 6 feet tall and weighed 150 pounds, that he had not been prescribed any medication or treatment that interfered with DLA, that he would require the medication/treatment for life, that he did not require any prostheses or aids for his impairment and that the impairment was likely to continue for two or more years. The physician indicated that the Appellant suffered relapses approximately every three months and would require a month to recover from each episode.

Regarding functional skills, the PR states that the Appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, had no limitations on lifting or remaining seated. No difficulties with communication are noted. A significant deficit with 1 of 11 specified aspects of cognitive and emotional function is indicated (emotional disturbance.)

The physician reports that when the Appellant's disease is flaring up, 3 of 10 DLA were restricted (management of medication, management of finances and social functioning.) The physician indicated that it was unknown whether mobility within the home was restricted. The physician commented that 3 to 4 weeks out of each 3 month period, the Appellant's DLA would be restricted as reported above. He described the impact on social functioning as the Appellant becoming home bound, and bed ridden as it hurts to sit. The physician stated that the Appellant needed support to assist him with DLA.

In the AR, completed by the same physician, the Appellant's ability to communicate is reported to be good. When the Appellant's Crohn's disease is flaring up, the AR states that he requires periodic assistance from another person to walk indoors, for lifting and for carrying and holding. During an episode, he needs continuous assistance from another person or is unable to walk outdoors. The assessor also reported that during an episode it took the Appellant significantly longer than typical to walk indoors, walk outdoors, climb stairs and stand.

A major impact is noted for two aspects of cognitive and emotional functioning, that is bodily functions (specifically toileting problems) and other emotional or mental problems, with the assessor noting frustration of the Appellant during episodes. The assessor indicated that there was a moderate impact on emotion, motivation and motor activity, with extreme tension being noted.

Regarding DLA, during episodes, the Appellant is reported to be independent with 1 aspect of 'personal care' (bathing), require periodic assistance from another person with 5 aspects (grooming, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair) and to take significantly longer than typical to dress, toilet, feed self, regulate diet, and transfer in/out of bed and on/off chair.

According to the AR, the Appellant requires continuous assistance from another person or is unable with regard to laundry and basic housekeeping. The assessor noted that the Appellant requires continuous assistance from another person or is unable with regard to going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home, and that all of these aspects of shopping take significantly longer than typical.

The Appellant is independent with regard to food storage, but requires periodic assistance from another person with regard to meal planning, food preparation and cooking. The assessor noted that it takes the Appellant significantly longer to perform these DLA.

The Appellant can independently manage all aspects of paying rent and bills and medications, but requires periodic assistance from another person with regard to getting in and out of a vehicle. The Appellant requires continuous assistance from another person or is unable to use public transit, use transit schedules and arrange transportation. The assessor indicates it takes the Appellant significantly longer than typical to get in and out of a vehicle.

The assessor notes that the Appellant is independent with regard to all aspects of social functioning except that he requires periodic support/supervision to deal appropriately with unexpected demands. The Appellant is reported to have good functioning with his immediate social network and his extended social network.

Assistance is provided for the Applicant by family and friends. The assessor did not note the requirement of use of assistive devices or assistance animals.

The Ministry also had a written statement from the Appellant, which was not dated, in which the Appellant described the course of his illness, and its impact on him.

The Appellant submitted new evidence at the appeal in the form of his verbal description of the progress of his illness between January and September of 2010, and its impact on him.

The Appellant stated that his Crohn's disease had been active continuously between January of 2010 and the present, with the exception of a brief respite in July. He had been unable to attend school or work, and had been bedridden. In July, he had begun treatment by infusion of Remicade but that had to be suspended due to a bacterial infection. In September, he had three surgeries due to a Crohn's related abscess.

The Appellant described significant loss of weight, having no energy and suffering agonizing pain. The Appellant stated that he was taking Tylenol 3 for pain, and still unable at times to get

out of bed without assistance. His parents took time off work to assist him when his symptoms were at their worst. At the hearing, the Appellant advised that he was on a morphine-based pain medication due to the most recent surgery.

The Appellant described severe emotional distress about his situation. Due to his illness, not only did he suffer physically, but he was unable to live away from his parents, he could not make progress with his education due to repeated flare ups, he could not earn income and his financial picture had deteriorated to the point that he had declared bankruptcy.

The panel found that the new evidence is verbal testimony in support of the information and records that were before the Ministry when the reconsideration decision was made. The panel admitted the new evidence, pursuant to section 22(4) of the Employment and Assistance Act.

The panel accepted the new evidence provided by the Appellant.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this 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 the EAPWDA, sections 2(2) and 2(3):

2(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 has a severe mental or physical impairment that:

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional (B.C. Reg. 196/2007)
 - (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.

2(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.

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

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managing personal medication.

The Appellant's position is that he is eligible for designation as a PWD because the report of his physician shows that he has met the age requirement, his physical and mental impairment is severe, and will continue for two years, and directly and significantly restricts his ability to perform DLA, some continuously and some periodically for extended periods, and as a result of the restrictions on his ability to perform daily living activities, he requires help to perform those activities, with the significant help of other persons.

The Ministry concedes that the Appellant has satisfied the age criterion and the requirement that his condition will last for 2 years. The Ministry's position is that the prescribed professional's evidence does not establish that the Appellant has a severe physical or mental impairment, nor that his impairment significantly restricts his ability to perform DLA, either continuously or periodically for extended periods, nor that as a result of direct and significant restrictions, the Appellant needs help to perform DLA.

Regarding the existence of a severe mental impairment, the panel finds that the PR identified that the Appellant's condition causes major impact for 1 aspect of cognitive and emotional functioning, that is, emotional disturbance (depression, anxiety.) The AR reported that the impairment of cognitive and emotional functioning had a major impact on bodily functioning, specifically toileting problems, and caused frustration. The AR also reported a moderate impact on emotion, motivation and motor activity. The new evidence provided by the Appellant fleshed out the impact of the Appellant's physical impairment on his mental condition, but the panel found that the Ministry's conclusion that the Appellant does not have a severe mental impairment was reasonable.

Regarding the existence of a severe physical impairment, the panel noted that the evidence in the PR was that when the Appellant's disease is flaring up, the Appellant needs periodic assistance from another person to walk indoors, and for lifting, carrying and holding. He requires continuous assistance from another person or is unable to walk outdoors. Walking, climbing stairs and standing take significantly longer than typical. 10 of 28 aspects of DLA required periodic assistance from another person (grooming, feeding self, regulate diet, transfers in/out of bed and on/off chair, meal planning, food preparation, cooking and getting in and out of a vehicle.) 9 of 28 aspects of DLA required continuous assistance from another person, or was unable (laundry, basic housekeeping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home, using public transit and using transit schedules and arranging transportation.) 14 aspects of DLA took significantly longer than typical to perform (dressing, toileting, feeding self, regulating diet, transfers in and out of bed and on and off of chair, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home, meal planning, food preparation, cooking, and getting in and out of a vehicle.)

The evidence in the PR and AR was that the Appellant received assistance from family and friends. The new evidence provided more specific information about the assistance the Appellant received from family.

The new evidence established that the Appellant's disease had been active since January of 2010, and confirmed the need for continuous or periodic assistance with DLA set out in the PR and AR.

The evidence as a whole establishes limitations to physical functioning which are reasonably viewed as indicative of a severe physical impairment. Therefore, the panel finds that the Ministry's determination that the Appellant did not have a severe physical impairment was unreasonable.

Regarding the degree to which the Appellant's DLA are restricted, the panel finds that the evidence of a prescribed professional indicates that the Appellant is not able to independently manage a significant number of DLA. The AR establishes that when his disease is active, the Appellant is continuously restricted with the physical aspects of basic housekeeping, shopping, walking outdoors and using public transport. The Appellant is periodically restricted with regard to 3 aspects of mobility and physical ability, 5 aspects of personal care, 3 aspects of meals and with getting in and out of a vehicle. Almost all of these DLA take the Appellant longer than typical.

The evidence as a whole indicates that the Appellant is directly and significantly restricted, either continuously or periodically, for extended periods of time in his ability to perform DLAs. Therefore the panel finds that the Ministry did not reasonably conclude that the appellant is not directly and significantly restricted either continuously or periodically for extended periods in his ability to perform DLA as required under s. 2(2)(b)(i) of the EAPWDA.

The panel also finds that, as a direct and significant restriction with DLA has been established, and as a prescribed professional has indicated the need for help with DLA, the Ministry did not reasonably determine that the evidence does not establish that in the opinion of a prescribed professional, the significant help or supervision of another person, use of an assistive device or assistance animal is required to perform DLA as required under section 2(2)(b)(ii) of the EAPWDA.

The panel finds that the Ministry's reconsideration decision is not reasonably supported by the evidence and rescinds the Ministry's reconsideration decision. Therefore the Ministry's decision is overturned in favour of the Appellant.