

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated September 16, 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 signed February 1, 2010 (PR), and Assessor Report signed February 23, 2010 (AR);
- a second PWD application (Self-Report (SR), Physician Report signed March 1, 2006, and Assessor Report signed February 20, 2006 (AR);
- a 7-page January 15, 2009 vocational assessment;
- a 7-page July 8, 2008 medical legal report;
- a 10-page November 5, 2008 psychiatrist's report; and
- Psychological Assessments dated November 21, 2005 (9-pages) and March 14, 2010 (13-pages).

In the SR included in the 2010 PWD application, the appellant writes that due to a motor vehicle accident (MVA) he has Post Traumatic Stress Disorder (PTSD) which has permanently and seriously altered his enjoyment and quality of life. He reports intrusive thoughts, nightmares, flashbacks, insomnia, irritability, difficulty concentrating, emotional detachment, and that he is easily startled and avoids people and activities. The appellant reports that he relies on other people for help with "just about everything". Additionally, the appellant reports permanent persistent pain in his left (chronic) and right knees and left hip which affect walking, standing, kneeling, and squatting and impact his ability to manage physical demands.

In the February 1, 2010 PR, completed by the appellant's psychiatrist of 2-3 years, the appellant is diagnosed with PTSD and musculoskeletal injury and his medical condition described as "severe, slight improvement"; medication that may cause sedation has been prescribed. Regarding Functional Skills, the appellant's ability to walk, climb stairs, lift, and remain seated are reported as unknown; the appellant is reported to have no difficulties with communication and deficits in 4 of 11 specified aspects of cognitive and emotional function (executive, emotional disturbance, motivation, attention or sustained concentration) which are described as "episodic, problems increase with increased anxiety". Regarding DLA, continuous restrictions are reported for daily shopping and use of transportation. Periodic restrictions are reported for mobility inside and outside the home and social functioning with narrative that "abilities are affected by level of anxiety & stress"; in terms of social functioning, the physician also writes "with increased anxiety, tends to isolate". Assistance needed is described as "ongoing exposure therapy for driving, leaving home", pharmacotherapy, physiotherapy, occupational therapy in order to maintain and hopefully increase functioning.

In the February 23, 2010 AR, completed by a psychiatric nurse who has known the appellant for 5 years, the appellant's Ability to Communicate is reported as good though, at times, concentration is very poor and reading and writing is limited to brief periods when the appellant can focus and organize thoughts. Regarding Mobility and Physical Ability, the appellant is reported to independently manage walking indoors and outdoors, climbing stairs, standing with lifting and carrying/holding requiring periodic assistance due to chronic back pain and mobility being limited in terms of where and for how long the appellant can go due to PTSD. Regarding Cognitive and Emotional Functioning, a major impact on daily functioning is reported for emotion and attention/concentration with a moderate impact noted for bodily functions (sleep disturbance) and executive. Either minimal or no impact is indicated for the remaining 9 identified aspects. Regarding DLA, the appellant is reported to independently manage all aspects of personal care, basic housekeeping, paying rent and bills, and medications. Respecting shopping, 2 aspects are managed independently with 3 aspects (going to and from stores, paying for purchases ("...living with extreme poverty"), and carrying purchases home requiring periodic assistance with additional narrative that many times the appellant is unable to get to the services/supplies he needs due to PTSD and poverty. All aspects of meals require periodic assistance as does the 1 applicable aspect of transportation (getting in and out of a vehicle). Regarding social functioning, 4 aspects are managed independently with 1 aspect requiring periodic assistance (deal appropriately with unexpected demands); good functioning is reported with immediate social networks and marginal functioning is reported with extended

social networks. Assistance is provided by family, friends, and health authority professionals and the assessor reports that the appellant "at times is housebound with anxiety". The assessor reported continuing slow gains in terms of learning to drive short distances again and that the appellant is not capable of working due to poor concentration, poor executive functioning at times, and PTSD.

In the January 15, 2010 vocational assessment, the assessor reports the following:

- able to drive during daylight hours and in low congestion areas;
- continued to experience considerable anxiety in new or unknown situations and tended to limit himself to socially interacting with small groups and family members;
- there is the possibility that the appellant will not be able to return to the labour market because of the combined psychiatric and physical issues – needs proper conditions related to his driving phobia and generalized anxiety and specific job demands that are within his physical tolerance levels.

In the July 8, 2008 medical-legal report prepared by a physician from a bone and joint clinic, the appellant's "current situation" is reported as pain in both knees and the left hip. Left knee pain is reported as the predominant symptom with a walking tolerance limited to an hour a day in ½ hour increments. It is the physician's opinion is that the appellant's left knee problem is chronic and may improve, but not resolve, with further weight loss and quadriceps exercise. It causes a significant limp which has aggravated the lower back and right knee. The appellant "is likely to have ongoing persistent discomfort in these three areas for the foreseeable future and probably permanently..." and "is unlikely to be able to do a manual labor job or a job that involves prolonged standing or any squatting, kneeling or walking". "In my opinion he is not totally disabled but would be partially disabled". "He would need a job that allowed for frequent changes in position and control of his working environment".

In the November 5, 2008 psychiatrist's report, the appellant is reported as having stated that he is able to stand for approximately 15 to 20 minutes before the pain is extreme, is able to walk approximately 1 mile in duration, and experiences pain if sitting more than one hour in one place. Separation from his spouse in 2007 is reported to have resulted in a positive benefit as it forced the appellant to become more independent resulting in increased driving and self-sufficiency. The appellant has continued fear and apprehension driving and is able to handle light traffic on the highway and city during the daytime. Heavy traffic and nighttime driving are avoided. Results of the psychiatrist's Mental Status Examination included: appetite, weight, and sleep functions had improved and motivation seemed relatively intact; some social anxieties noted; thought form was goal-directed and there was no evidence of any disturbance in thought content or perception. In summary, there has been clear improvement in his psychiatric condition since 2006 as his driving fears are diminished though he still experiences marked increase in symptoms when forced to drive at night or in heavy traffic. He remains highly anxious with gradual improvement over time; there has been steady progress with greater progress since separating from his common-law spouse. It is more likely than not that he will be left with chronic anxiety symptoms and probable panic attacks whenever exposed to any challenging or novel situations that tax his abilities. He may be able to return to work under the proper conditions – avoidance of demanding driving to and from work and/or as part of the work as well as the need for a graduated return to work program to help minimize anxiety symptoms one would predict to be triggered, and a great deal of vocational counseling as well as ongoing psychological counseling.

In the March 14, 2010 Psychology Assessment Report, the diagnosis of PTSD is confirmed and the psychologist reports that the appellant developed a good working relationship with his counselor, who indicated in his February 10, 2009 discharge report, that the appellant and he were in agreement that the goals set out for their treatment sessions had been met and that the appellant was capable of driving anywhere in the city he need to for work and could also spend time away from home. The psychologist wrote that in general activities of daily living the appellant is: "unimpaired" with respect to self-care, personal hygiene, ambulation, sensory function and hand functions; "partially impaired" with respect to physical activity; "impaired" with

respect to sleep and basic social and recreational activities and travel as a consequence of anxiety and its limitation of his ability to travel by motor vehicle independently. In terms of a work environment, the appellant is reported as "partially impaired" in interacting appropriately and communicating effectively and with respect to understanding and remembering specific work procedures and instructions as evidenced by difficulties in his ability to sustain attention, concentrate and follow a line of thinking and is "impaired" with respect to the ability to sustain focused attention for the completion of common work tasks. With respect to concentration, persistence, and pace in the workplace, the appellant is "unimpaired" with respect to the ability to carry out short, simple instructions and "partially impaired" with respect to the ability to carry out detailed instructions and "impaired" with the ability to maintain attention and concentration for extended periods. With respect to "general adaptability to stressful circumstances", the appellant is "impaired" with respect to monitoring activities of daily living, continuing social relationships and completing tasks under stress. He is "impaired" with respect to the ability to use public transportation, travel to and within familiar places and set realistic goals. Although the appellant demonstrated clear benefit from therapy, he has since deteriorated; the prognosis for improvement of his psychological and vocational life is poor and he displays a variety of psychological permanent functional impairments.

The panel has not summarized the findings in the November 21, 2005 psychologist's report in light of the more recent March 14, 2010 report from the same psychologist which reflects his current assessment of the appellant as well as changes in the appellant's circumstances including the end of his common-law relationship and involvement in MVAs subsequent to the completion of the 2005 report. Similarly, the panel has placed greater weight on the February 2010 PWD application than the 2006 PWD application.

At the hearing, the ministry stood by its reconsideration decision.

At the hearing, the appellant clarified the roles of the various health care professionals stating that some only have knowledge of his mental health. The appellant also clarified that he has been involved in 3 separate MVAs either as a passenger or witness in 2000, 2005, and 2007. The appellant stated that he receives help from his children.

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 the evidence of his health care professionals establishes that he has a severe impairment which directly and significantly restricts his ability to perform DLA and necessitates the significant assistance of another person. He argues that the ministry unreasonably relied on the failure of the physician who completed the PR, who is a psychiatrist, to assess physical functional skills and that the ministry unreasonably relied on select "bits and pieces" of the evidence in reaching its decision.

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 necessitating help.

Regarding the existence of a severe physical impairment, the appellant is diagnosed with musculoskeletal injury and experiences pain in both knees (chronic left knee pain) as well as hip and lower back pain which the appellant reports affect walking, standing, kneeling, and squatting and impacts his ability to manage physical demands. The evidence in the AR is that the appellant's physical impairment results in the need for periodic assistance with lifting and carrying/holding while walking indoors/outdoors, climbing stairs and standing are managed independently. The AR identifies the need for periodic assistance for some aspects of DLA with supporting narrative respecting the appellant's PTSD and poverty but no narrative respecting any impact that the appellant's physical impairment has on his ability to perform DLA; however, the panel finds that it is reasonable to conclude that the restriction identified with 1 aspect of the DLA shopping, carrying purchases home, is clearly related to the appellant's physical impairment. In the physician's July 8, 2008 medical legal report, the appellant's is reported to have a walking tolerance limited to an hour a day in ½ hour increments. The physician's opinion is that the appellant's left knee problem is chronic and may improve but not resolve with further weight loss and quadriceps exercise and that the appellant "is likely to have ongoing persistent discomfort in these three areas for the foreseeable future and probably permanently..." and "is unlikely to be

able to do a manual labor job or a job that involves prolonged standing or any squatting, kneeling or walking". The physician adds that "In my opinion he is not totally disabled but would be partially disabled". The March 14, 2010 psychologist's assessment also reports "partial impairment" with respect to physical activity with no specific details regarding the appellant's level of functioning in terms of walking, lifting, etc. In the November 5, 2008 psychiatrist's report, the appellant is reported as having stated that he is able to stand for approximately 15 to 20 minutes before the pain is extreme, is able to walk approximately 1 mile in duration, and experiences pain if sitting more than one hour in one place.

The panel finds that the evidence of the appellant and the physician who completed the medical-legal report establishes that as a result of bilateral knee, hip and lower back pain, the appellant has limitations on his ability to walk, stand, and remain seated. Some impairment in the appellant's ability to lift and carry, which necessitates periodic assistance, is also established in the AR though there is insufficient evidence in AR, and no other evidence is provided, to establish either how often or with what weight load the appellant requires periodic assistance. Although the aforementioned impairments have been established, in light of the evidence from both the 2008 medical-legal report and the psychiatrist's report that the appellant can walk for up to a mile or for half an hour and can remain seated for up to one hour together with the evidence in the AR that the appellant is independent in terms of walking, standing, and climbing stairs, the panel finds that the ministry reasonably determined that a severe physical impairment has not been established under section 2(2) of the EAPWDA.

Regarding the existence of a severe mental impairment, the appellant is diagnosed with PTSD and associated anxiety. The appellant reports symptoms including insomnia, emotional detachment, and problems with concentration. In the PR, the appellant's psychiatrist reports no difficulties with communication and significant deficits in 4 of 11 specified aspects of cognitive and emotional function (executive, emotional disturbance, motivation, attention or sustained concentration) which are episodic and increase with anxiety. In the AR, a major impact on daily functioning is reported for emotion and attention/concentration with a moderate impact noted for bodily functions (sleep disturbance) and executive function with minimal or no impact indicated for the remaining 9 identified aspects. The PR identifies continuous restrictions with daily shopping and the use of transportation respecting the appellant's ability to drive with periodic restrictions identified for mobility inside and outside the home with narrative that "abilities are affected by level of anxiety & stress". The AR indicates periodic assistance is required for going to and from stores due to PTSD and associated anxiety. Regarding social functioning, the PR indicates a periodic restriction and tendency to isolate with increased anxiety; the AR indicates independent functioning in all but 1 aspect, dealing appropriately with unexpected demands, for which periodic support/supervision is indicated with good and marginal functioning, respectively, with immediate and extended social networks. Neither the PR nor the AR identifies difficulties making decisions about personal activities, care or finances. The results of a Mental Status Examination in 2008 indicated that, since 2006, the appellant's appetite, weight, and sleep functions had improved and his motivation seemed relatively intact, thought form was goal-directed, and there was no evidence of any disturbance in thought content or perception. The psychiatrist summarized that there was clear improvement since 2006 as the appellant's driving fears had diminished and he had greater progress and independence since separating from his common-law spouse and that it is more likely than not that the appellant would be left with chronic anxiety symptoms and probable panic attacks whenever exposed to any challenging or novel situations that tax his abilities. In the February 14, 2010 psychological assessment the appellant is reported as "impaired" with respect to sleep and basic social and recreational activities and travel as a consequence of anxiety and its limitation of his ability to travel by motor vehicle independently. Attention, concentration and memory, described in terms of a work environment, are "unimpaired" with respect to the ability to carry out short, simple instructions, "partially impaired" with respect to the ability to carry out detailed instructions, and "impaired" with the ability to maintain attention and concentration for extended periods. With respect to "general adaptability to stressful circumstances", the appellant is "impaired" with respect to monitoring activities of daily living, continuing social relationships and completing tasks under stress.

The panel finds that the evidence establishes some ongoing limitations to the appellant's functioning due to a mental impairment, most notably his ability to drive. However, the panel finds that the ministry reasonably determined that the evidence does not establish a severe mental impairment for the following reasons: (i) while continuously restricted in his ability to drive, the evidence on the whole establishes that the appellant's ability to drive is variable, depending on stress and driving conditions, and that he can drive during the day in lighter traffic in order to get to and from stores; (ii) while the AR reports a major impact on daily functioning respecting attention and concentration, the PR describes the impact as periodic and dependant on stress level and the February 14, 2010 states that the appellant is "impaired" only when maintaining attention and concentration for an extended period; (iii) the appellant's mental impairment is reported as having no impact on his ability to make decisions about personal activities, care or finances; (iv) relatively independent social functioning is reported in both the PR and AR as is good functioning with immediate social networks and, although the appellant reports emotional detachment and the AR indicates marginal functioning with extended social networks, he has a good relationship with his immediate social network, including his children, has been able to develop personal relationships since separating from his former common-law spouse, and developed a good working relationship with his counselor; (v) on the whole, the evidence reflects a reasonably good level of functioning excepting times of stressful, challenging, novel or unexpected situations. Thus, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established under section 2(2) of the EAPWDA.

Regarding the appellant's ability to manage DLA, a direct and continuous restriction with both daily shopping and use of transportation are reported in the PR with periodic restrictions reported for mobility and social functioning depending on anxiety and stress levels. In the AR, periodic assistance is identified for: 3 aspects of shopping due to PTSD, poverty, and carrying limitations; all aspects of meals; 1 aspect of transportation; and 1 of 5 aspects of social functioning. No evidence is provided in the AR respecting the frequency or duration of the need for periodic assistance. In the February 14, 2010 psychologist's report, respecting the appellant's general adaptability to stressful circumstances", he is reported as being "impaired" with respect to monitoring activities of daily living, continuing social relationships and completing tasks under stress. Additional evidence is that the appellant can drive during the day in light traffic.

The panel finds that the evidence establishes that the appellant can manage personal care, housekeeping, finances, and medication without any restriction. The panel also finds that, in the absence of any evidence as to the frequency and duration of assistance required with meals and carrying purchases home or information respecting the amount of weight the appellant can carry, the ministry reasonably determined that it could not be established that the restriction is for extended periods or that it is significant. Respecting social functioning, given the evidence of the development and maintenance of good personal and professional relationships, that the restriction is described in the PR as episodic, and as the AR indicates that 4 of 5 aspects are managed independently with periodic assistance of an unspecified frequency and duration required for 1 aspect, the panel finds that the ministry reasonably determined that a significant restriction with social functioning was not established. The panel finds that the psychologist's statement that the appellant is impaired with respect to monitoring activities of daily living, social relationships and completing tasks under stress does indicate that the appellant is unable to perform DLA and reflects functioning when under stress. The panel finds that on the whole, the evidence establishes that the greatest degree of restriction with DLA relates to the appellant's ability to drive. While it has been established that the appellant has continuous ongoing restrictions in his ability to drive, in light of the evidence in the AR of the need for only periodic assistance with going to and from stores and transportation and the evidence that the appellant can drive during the day in light traffic, the panel finds that the ministry reasonably determined that a significant restriction has not been established. Therefore, the panel finds that the ministry reasonably determined that, in the opinion of a prescribed professional, a direct and significant restriction of the appellant's ability to perform DLA either continuously or periodically for extended periods was not established under 2(2)(b)(i) of the EAPWDA.

Regarding the need for help with DLA, the panel finds that as a direct and significant continuous restriction with DLA has not been established, the ministry reasonably found that it cannot be determined that the significant assistance of another person, the use of an assistive device or assistance animal is required to perform DLA 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.