

PART C – Decision under Appeal

On 2010 Oct 13, on reconsideration, the Ministry decided that the appellant was not eligible for Persons With Disabilities (PWD) designation because he did not have a severe impairment, his daily living activities (DLAs) were not significantly restricted and he did not require assistance with his DLA as a result of significant restrictions.

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 information before the ministry at reconsideration included:

- Appellant's Request for Reconsideration dated 2010 Jul 5.
- Ministry's PWD Designation Decision Summary dated 2010 Jun 18.
- Medical clinic notes, requisitions and reports about the appellant (approximately 80 pages).
- Appellant's PWD Designation Application dated 2010 Mar 2.

At hearing, the appellant and his support person gave oral testimony about the appellant's medical condition and impacts on daily living activities (DLAs). The panel admitted this oral testimony, finding it was in support of the information before the ministry at reconsideration pursuant to the Employment and Assistance Act Section 22(4)(b). The appellant stated he had an appointment soon for another CT scan of his neck and that his physical condition was deteriorating.

The PWD Designation Application consists of 3 parts:

- Appellant's self report (SR).
- Physician's report (PR).
- Assessor's report (AR).

In the SR, the appellant describes his condition as being in constant, chronic pain from arthritis and damaged rotator cusps. He cannot sit or stand for very long. Although he has tried all sorts of medication for his arthritis, nothing works and he requires pain medication to help him through the pain and to get sleep.

In the PR, the appellant's physician diagnoses him with chronic neck/back pain, degenerative disc disease, osteoarthritis, depression and hepatitis C. The physician indicates the appellant is in severe pain of the lower back, neck, hands, hips, etc. He has weakness in his right leg and paraesthesia in his left leg. These cause difficulty in standing, sitting and walking for an extended time. He can walk unaided less than a block, climb 2-5 steps unaided, lift 2-7 kg, remain seated less than 1 hour and has no difficulty in communicating. The physician indicates significant deficits in the areas of depression, motivation and memory but provides no details. In the section for DLA, the physician indicates only 1 of the 9 categories of DLA is restricted, mobility outside the home and reports the appellant needs no assistance with DLA.

The appellant's physician, as a prescribed professional (PP) completed the AR, and does not summarize the appellant's mental or physical impairments that impact his ability to manage DLA. Ability to Communicate (4 sub categories) is "good". In Mobility and Physical Ability (6 sub categories) only one, walking outdoors, is indicated as "uses assistive device" with no further explanation. Cognitive and Emotional Functioning, (14 sub categories) 5 have no impact, 4 have minimal impact, 3 (concentration, motivation, and motor activity) have moderate impact and 2 (depression and memory) have a major impact. In the DLA section (33 sub categories) one, carrying purchases home, takes significantly longer and 3 (getting in and out of a vehicle, using public transportation and able to secure assistance from others) require periodic assistance. The PP indicates assistance is provided through family and friends and the appellant uses a cane and braces as assistive devices.

## PART F – Reasons for Panel Decision

The issue for the panel to determine in this appeal is the reasonableness of the ministry's decision to deny the appellant PWD status because the appellant did not have a severe impairment that significantly restricted his ability to perform DLA and that as a result of the restriction, required help to perform DLAs.

The legislation provides:

### Employment and Assistance Act

#### 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 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

(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.

### Employment and Assistance Regulation

#### Daily living activities

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f ) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

The ministry argues the appellant does not have a severe physical impairment because in the Physician's Report (PR) section of the appellant's PWD application, the physician indicates the appellant is independent with walking indoors and uses an unspecified assistive device for walking outdoors. In addition, the physician has not indicated whether the appellant is independent with climbing stairs, standing, lifting, carrying and holding. The ministry argues the PR does not indicate the appellant has a severe mental impairment because the areas on the PR for detailing deficits only 2 areas have a major impact on functioning and the other 13 areas have either a moderate impact or none. Furthermore, the ministry argues, the PR indicates good functioning with both immediate and extended social networks.

The ministry argues that information in the Assessor's Report (AR) section of the appellant's PWD application does not establish that the appellant's impairment directly and significantly restricts the appellant's ability to perform DLAs because the information shows the appellant is independently able to perform most DLAs—25 of 28 areas considered. The 3 areas restricted include periodic assistance in getting in and out of vehicles and using public transportation and taking significantly longer carrying purchases home which the ministry argues are not significant restrictions.

The ministry argues that because the appellant's ability to perform DLAs is not severely restricted, it

cannot be determined that significant help is required from other persons.

Finally, the ministry argues that the medical clinic notes, requisitions and reports about the appellant (approximately 80 pages) describe and amplify the physician's diagnoses and do not address the matter of restriction of DLAs.

The appellant argues that he does have a severe physical impairment and points to the medical and clinical notes included with his PWD application. He argues his condition is deteriorating and medical treatment consists of pills for pain rather than corrective actions. In respect of DLAs, the appellant argues that while he strives to perform them independently, his constant pain makes sitting and standing difficult. He cannot do his laundry and other DLAs take a long time. He also relies on his landlady to transport him to and from shopping and medical appointments. He also argues that he uses assistive devices in that he has 3 different back braces and a knee brace.

Because the evidence of the physician and the medical clinic notes describes a painful, debilitating, deteriorating and as yet untreatable medical condition, the panel finds the ministry was not reasonable in finding the appellant does not have a severe physical impairment. The evidence of the PP is that the appellant takes significantly longer to carry purchases home and uses a cane for walking outdoors. The panel finds these are not direct and significant restrictions of the DLAs "shop for personal needs" and "move about indoors and outdoors" respectively. The evidence of the PP is that the appellant requires periodic assistance from another person for the DLA "use public and personal transportation facilities", which the panel finds is a direct and significant restriction. Because all but one DLA can be performed without direct and significant restriction, the panel finds the ministry was reasonable in denying the appellant PWD status. The panel finds the ministry's decision was reasonably supported by the evidence and therefore confirms the reconsideration decision.